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*Sections 937.1 through 937.12 issued under the authority contained in 48 Stat. 31 (1933), 7 U.S.C. § 601 et seq. (1934); 49 Stat. 750 (1935); 50 Stat. 246 (1937), 7 U.S.C. § 601 et seq. (Supp. IV, 1938).



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Whereas under the provisions of Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (hereinafter referred to as the "act"), it is provided that the Secretary of Agriculture of the United States (hereinafter referred to as the "Secretary") shall, subject to the provisions of the act, issue orders regulating such handling of certain agricultural commodities as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects interstate or foreign commerce in such commodities; and

Whereas the Secretary, having reason to believe that the issuance of an order would tend to effectuate the declared policy of the act with respect to the establishment and maintenance of such orderly marketing conditions for tomatoes grown in the State of Mississippi as would establish prices to the producers of such tomatoes at a level that would give such tomatoes a purchasing power with respect to articles that the producers thereof buy equivalent to the purchasing power of such tomatoes during the base period August 1919–July 1929, conducted a public hearing at Crystal Springs, Mississippi, on April 6, 1939, pursuant to due notice given to all interested parties on March 23, 1939,¹ on a proposed order regulating such handling of such tomatoes as is in the current of interstate commerce or commerce to Canada, or which directly burdens, obstructs, or affects such commerce in such tomatoes, at which hearing all interested persons in attendance were afforded due opportunity to be heard concerning the proposed order; and

Whereas the Secretary has found and proclaimed² that the purchasing power of tomatoes grown in the State of Mississippi during the period August 1909–July 1914 cannot be satisfactorily determined from available statistics of the Department of Agriculture, but that the purchasing power of such tomatoes can be satisfactorily determined from available statistics of the Department of Agriculture for the period August 1919–July 1929, and that the period August 1919–July 1929 is the base period to be used in connection with this order in determining the purchasing power of such tomatoes; and

Whereas the Secretary finds upon the basis of the evidence introduced at the hearing and the record thereof:

(1) That at the time of the hearing the prices received by the producers of such tomatoes were at a level that gave such tomatoes a purchasing power with respect to articles that the producers thereof buy appreciably below the purchasing power of such tomatoes during the base period;

¹ 4 F.R. 1320 DI.

² See p. 2248.

(2) That the regulation of shipments of such tomatoes by grades or sizes, as prescribed herein, will serve to prevent marked fluctuations in prices to the producers thereof, and will establish and maintain a more stabilized market for such tomatoes, tending to establish prices to the producers thereof at a level that will give such tomatoes a purchasing power with respect to articles that the producers thereof buy equivalent to the purchasing power of such tomatoes during the base period;

(3) That this order is limited in its application to the smallest regional production area and to the smallest regional marketing area that is practicable, consistently with carrying out the declared policy of the act, and that the issuance of several orders applicable to any subdivision of such regional production or marketing areas would not effectively carry out the declared policy of the act;

(4) That the pro rata contribution of handlers to the expenses of the administrative agency herein established, based upon the quantity of tomatoes shipped, as provided in this order, is fair and equitable; and

(5) That this order and all the terms and conditions thereof will tend to effectuate the declared policy of the act with respect to tomatoes grown in the State of Mississippi by establishing and maintaining such orderly marketing conditions therefor as will establish prices to the producers thereof at a level that will give such tomatoes a purchasing power with respect to articles that the producers thereof buy equivalent to the purchasing power of such tomatoes in the base period, and by protecting the interest of the consumer by (a) approaching the level of prices which it is declared in the act to be the policy of Congress to establish by a gradual correction of the current level of prices at as rapid a rate as the Secretary deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and by (b) authorizing no action which has for its purpose the maintenance of prices to the producers of such tomatoes above the level which it is declared in the act to be the policy of Congress to establish; and

Whereas the Secretary finds:

(1) That a marketing agreement regulating the handling of tomatoes grown in the State of Mississippi, executed on the 31st day of May 1939, upon which a hearing was held on April 6, 1939, was signed by handlers (excluding cooperative associations of producers who were not engaged in processing, distributing, or shipping tomatoes covered by this order) who, during the 1938 season, handled not less than fifty (50) percent of the volume of tomatoes covered by this order which were marketed during the same season in the current of interstate or foreign com-

merce, or so as directly to burden, obstruct, or affect such commerce;

(2) That this order regulates the handling of such tomatoes in the same manner as the aforesaid marketing agreement, and that it is made applicable only to persons in the respective classes of industrial and commercial activity specified in the said marketing agreement; and

(3) That the issuance of this order is favored by more than two-thirds ($\frac{2}{3}$) of the producers who, during the 1938 season (which is hereby determined to be a representative period), produced tomatoes for market within the State of Mississippi.

Now, therefore, it is hereby ordered, pursuant to the provisions of the act, that such handling of tomatoes grown in the State of Mississippi as is in the current of interstate commerce or commerce to Canada, or which directly burdens, obstructs, or affects such commerce in such tomatoes, from and after the date hereinafter specified, shall be in conformity to and in compliance with the terms and conditions of this order.

§ 937.1 *Definitions.* As used herein, the following terms have the following meanings:

(a) "Secretary" means the Secretary of Agriculture of the United States of America.

(b) "Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended.

(c) "Person" means an individual, partnership, corporation, association, legal representative, or any organized group of individuals.

(d) "Tomatoes" means and includes any and all varieties of tomatoes grown in Mississippi for market.

(e) "Producer" means any person engaged in growing tomatoes.

(f) "Handler" means any person, except a common carrier for another person, whether as owner, agent, or otherwise, who first ships tomatoes, or who first causes tomatoes to be shipped, in fresh form from the State of Mississippi by rail, truck, boat, or any other means whatsoever.

(g) "Ship" means to sell, deliver, transport, offer for transportation, or ship in the current of interstate commerce or commerce to Canada, or so as directly to burden, obstruct, or affect such commerce. "Ship" does not include the act of a producer in selling, delivering, or transporting, within the State of Mississippi, tomatoes which have been produced by him.

(h) "Fiscal year" means the twelve-month period beginning April 1 of any year and ending the last day of March of the following year, both dates inclusive.*

§ 937.2 *Administrative Committee.*—(a) *Membership and organization of Administrative Committee.* An Administra-

tive Committee is hereby established consisting of seven members, four of whom shall represent producers, and three of whom shall represent handlers, and such members and their respective alternates shall be nominated and selected from representative districts in Mississippi as follows:

(b) *Districts and representation.* (1) District No. 1 shall be composed of Beat No. 5 of Copiah County, and all of Simpson County, and shall be represented by two (2) producer members and one (1) handler member;

(2) District No. 2 shall be composed of Beats No. 1, No. 2, and No. 3 of Copiah County, and all other counties not specifically enumerated in District No. 1 and District No. 3, and shall be represented by one (1) producer member and one (1) handler member;

(3) District No. 3 shall be composed of Beat No. 4 of Copiah County, and all of the Counties of Hinds, Claiborne, Rankin, and Jefferson, and shall be represented by one (1) producer member and one (1) handler member.

(c) *Nomination and selection of members.* Producer members and their respective alternates for each district shall be selected by the Secretary from nominees elected by the producers in such district, and handler members and their respective alternates for each district shall be selected by the Secretary from nominees elected by the handlers in such district. The number of nominees elected from the respective districts shall be as follows:

(1) District No. 1—four (4) nominees for producer members and two (2) nominees for handler members, and a corresponding number of nominees as alternates for such members;

(2) District No. 2—two (2) nominees for producer members and two (2) nominees for handler members, and a corresponding number of nominees as alternates for such members;

(3) District No. 3—two (2) nominees for producer members and two (2) nominees for handler members, and a corresponding number of nominees as alternates for such members.

(d) *Meetings for election of nominees.* Nominations for initial members and alternates for members of the Administrative Committee shall be made at meetings of producers and handlers called by the Secretary, as soon as practicable after the effective date hereof. Nominations for members and alternates for members, subsequent to the initial nominations, shall be made, on or before March 10 of each year, at meetings of producers and handlers in each of the districts designated in paragraph (b) of this section, and at such times and places as the Administrative Committee shall designate. At each of such meetings, the producers and handlers eligible to participate therein shall select a chairman and a secretary therefor. In the election of nominees, each producer and each handler shall be

entitled to vote in accordance with the provisions of paragraph (e) of this section. The chairman of the meeting shall announce at the meeting the name of each person for whom votes have been cast, whether as a member or as an alternate for a member, and the number of votes cast for each such person, and the chairman and the secretary of such meeting shall forthwith transmit such information to the Secretary.

(e) *Voting.* Only producers shall participate in the nomination of producer members and their alternates, and only handlers shall participate in the nomination of handler members and their alternates. A producer may participate only in the elections held in the district in which he produces tomatoes, and a handler may participate only in the elections held in the districts from which he shipped tomatoes during the preceding marketing season. No one may vote both as a handler and as a producer. Each producer shall be entitled to cast one vote on behalf of himself, his agents, partners, affiliates, subsidiaries, and representatives for each nominee to be elected. For each carload of tomatoes shipped during the preceding marketing season from the district in which the election is being held, each handler shall be entitled to one vote, on behalf of himself, his agents, partners, affiliates, subsidiaries, and representatives, for each nominee to be selected. No person shall participate as a producer in elections held in more than one district in any one season.

(f) *Eligibility for membership.* Members and alternates for members of the Administrative Committee must be residents of the district in and for which they are nominated and selected. Only producers shall be eligible for nomination and selection as producer members or as alternates for such members, and only handlers shall be eligible for nomination and selection as handler members or as alternates for such members.

(g) *Failure to nominate.* In the event nominations, subsequent to initial nominations, are not made pursuant to paragraphs (c) and (d) of this section on or before March 10 of any year, the Secretary may select members and alternates for members without regard to nominations.

(h) *Qualification.* Any person selected by the Secretary as a member or as an alternate for a member of the Administrative Committee shall qualify by filing a written acceptance with the Secretary within 15 days after being notified of such selection.

(i) *Term of office.* The initial members and their respective alternates shall hold office for a term beginning on the date designated by the Secretary and ending March 31, 1940, or until their successors are selected and have qualified. Members and alternates for members selected subsequent to the initial term shall serve during the fiscal year for which

they have been selected or until their successors are selected and have qualified.

(j) *Alternates for members of Administrative Committee.* An alternate for a member shall act in the place and stead of such member during such member's absence. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is selected and has qualified.

(k) *Vacancies.* To fill any vacancy occasioned by the failure to qualify of any person selected as a member or as an alternate for a member of the Administrative Committee, or in the event of the death, removal, resignation, or disqualification of any member or alternate for a member, a successor for his unexpired term shall be nominated and selected in the manner set forth in this section. If nominations to fill any such vacancy are not made within twenty (20) days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations.

(l) *Compensation and expenses.* The members and alternates for members of the Administrative Committee shall serve without compensation but may be reimbursed for expenses necessarily incurred by them in the performance of their respective duties.

(m) *Powers.* The Administrative Committee shall have the following powers:

(1) To administer, as herein specifically provided, the terms and provisions hereof;

(2) To make administrative rulings and regulations to effectuate the terms and provisions hereof;

(3) To receive, investigate, and report to the Secretary complaints of violations hereof; and

(4) To recommend to the Secretary amendments hereto.

(n) *Duties.* The duties of the Administrative Committee shall be as follows:

(1) To act as intermediary between the Secretary and any producer or handler;

(2) To keep minutes, books, and records which will clearly reflect all of its activities, and such minutes, books, and records shall be subject, at any time, to examination by the Secretary;

(3) To study and assemble data on the producing, shipping, and handling conditions respecting tomatoes grown in Mississippi, and to submit to the Secretary such available information as he may request;

(4) To perform such duties as may be assigned to it from time to time by the Secretary in connection with the administration of Section 32 of the Act to Amend the Agricultural Adjustment Act, and for other purposes (Pub. No. 320, 74th Congress), approved August 24, 1935, as amended;

(5) To cause its books to be audited by one or more certified public accountants at least once each fiscal year, and at such other times as it may deem neces-

sary, or as the Secretary may request, and to file with the Secretary copies of any and all audit reports;

(6) To appoint such employees as it may deem necessary and to determine the salaries and define the duties of such employees;

(7) To give the Secretary the same notice of its meetings as is given to its members; and

(8) To select a chairman from among its members and to select such other officers as it may deem advisable.

(o) *Procedure.* (1) A quorum at any meeting shall consist of five members or alternates then serving in the place and stead of any members, and all decisions of the Administrative Committee shall be made by not less than five affirmative votes.

(2) The members of the Administrative Committee, their alternates, and any agent or employee appointed or employed by the Administrative Committee, shall be subject to removal or suspension by the Secretary for cause at any time.

(3) Each and every regulation, decision, determination, or other act of the Administrative Committee, shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and upon such disapproval, shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

(p) *Funds and other property.* (1) All funds received by the Administrative Committee pursuant to any provision hereof shall be used solely for the purposes herein specified and shall be accounted for in the manner herein provided.

(2) The Secretary may, at any time, require the Administrative Committee and its individual members to account for all receipts and disbursements.

(3) Upon the death, removal, or expiration of the term of office, of any member or alternate for a member, or employee of the Administrative Committee, all books, records, funds, and other property in his possession shall be delivered to his successor in office, or to the Administrative Committee, and such assignments and other instruments shall be executed as may be necessary to vest in his successor, or in the Administrative Committee, full title to all the books, records, funds, and other property in the possession or under the control of such member, alternate, or employee pursuant hereto.

(4) The Administrative Committee may, with the approval of the Secretary, maintain in its own name, or in the names of its members, a suit for the collection of any handler's pro rata share of expenses.*

§ 937.3 *Regulation of shipments by grades and sizes—(a) Recommendation of the Administrative Committee.* Whenever the Administrative Committee deems it advisable to regulate the ship-

ment in interstate commerce or to Canada of any grades or sizes of tomatoes, or both, during any specified period, it may so recommend to the Secretary. At the time of submitting such recommendation, the Administrative Committee shall furnish to the Secretary all pertinent data and information upon which it acted in making such recommendation, along with such other data and information as the Secretary may request. The Administrative Committee shall give immediate notice to handlers and producers of any such recommendation, in such manner as it shall deem adequate under the circumstances.

(b) *Regulation of shipments.* Based upon the recommendation of the Administrative Committee and upon the information submitted in connection therewith, and upon other available data, the Secretary may regulate the grades or sizes, or both, of tomatoes which may be shipped during any specified period by prohibiting or limiting the shipment of certain grades or sizes, or both, of tomatoes during such period. The Secretary shall immediately notify the Administrative Committee of the issuance of such regulation, and the Administrative Committee shall promptly notify handlers and producers of the Secretary's regulation by giving notice in such manner as it shall deem adequate under the circumstances.

(c) *Exemption certificates.* (1) At the beginning of each fiscal year the Administrative Committee shall adopt and announce the procedural rules by which the exemption certificates will be issued to producers. Whenever the Administrative Committee recommends to the Secretary a regulation of shipments, pursuant to this section, it shall determine and immediately thereafter announce the percentage which the grades or sizes, or both, of tomatoes permitted to be shipped under such regulation bears to the total quantity of tomatoes which could be shipped in the absence of such regulation. The Administrative Committee shall thereafter grant an exemption certificate to any producer who furnishes proof that he will be prevented, because of the regulation established, from shipping as large a percentage of his tomatoes as the percentage announced by it for all producers. Such exemption certificate shall permit the producer to ship or cause to be shipped that quantity of the regulated grades or sizes, or both, of tomatoes as will enable him to ship or cause to be shipped as large a percentage of his tomatoes as the percentage announced by the Administrative Committee for all producers.

(2) If any producer is dissatisfied with the determination of the Administrative Committee with respect to his exemption certificate, he may appeal to the Secretary, whose decision in the matter shall be final and conclusive.

(3) The Secretary shall have power to modify, change, alter, or amend any

procedural rules and any exemption granted under this section.

(d) *Inspection and certification.* During any period in which a regulation of shipments pursuant to this section is in effect, every handler shall cause all shipments of tomatoes made by him to be inspected and the grade and size certified by a duly authorized representative of the Federal-State Inspection Service on the basis of grades now promulgated by the United States Department of Agriculture, or by the State of Mississippi, or as the same may be modified or changed hereafter. Each such handler shall submit, or cause to be submitted, promptly thereafter, to the Administrative Committee, a copy of the Federal-State Inspection Certificate issued on each such shipment.*

§ 937.4 *Expenses and assessments.*—(a) *Expenses.* The Administrative Committee is authorized to incur such expenses as the Secretary finds may be necessary to carry out its functions hereunder. The fund to cover such expenses shall be acquired by assessing all handlers on the basis of a rate to be fixed by the Administrative Committee prior to the beginning of each fiscal year and approved by the Secretary.

(b) *Assessments.* (1) Each handler shall pay to the Administrative Committee, upon demand, such handler's pro rata share of the expenses incurred by the Administrative Committee for its maintenance and functioning during the fiscal year. Each handler's share of such expenses shall be that proportion thereof which the total quantity of tomatoes shipped by such handler is of the total quantity of tomatoes shipped by all handlers during the fiscal year. The assessment may be adjusted from time to time by the Administrative Committee, with the approval of the Secretary, in order to meet actual expenses of the Administrative Committee during the fiscal year. The assessment of each handler for each fiscal year shall be due and payable at such time, and shall be payable in such installments, if any, as the Administrative Committee shall determine.

(2) At the end of each fiscal year the Administrative Committee shall credit each contributing handler with the excess of the amount paid by such handler above his pro rata share of the actual expenses, or debit such handler with the difference between his pro rata share and the amount paid by such handler, in which case the amount of the debit shall become immediately due and payable.*

§ 937.5 *Reports.* Upon a request by the Administrative Committee, approved by the Secretary, each handler shall furnish to the Administrative Committee, in such manner and at such times as it may prescribe, such information as will enable the Administrative Committee to perform its functions hereunder.*

§ 937.6 *Liability of Administrative Committee members.* No member or alternate for a member of the Administrative Committee, nor any employee or

agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler, or to any other person, for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, or employee, except for acts of dishonesty.*

§ 937.7 *Compliance and exceptions.*—(a) *Compliance.* Except as provided herein, no person shall ship tomatoes, the shipment of which has been prohibited by the Secretary in accordance with the provisions hereof.

(b) *Shipments for relief.* Nothing contained herein shall be construed to authorize any limitation of the right on the part of any person to ship tomatoes for consumption by charitable institutions or for distribution by relief agencies. The Administrative Committee may prescribe adequate safeguards to prevent tomatoes, shipped for either of such purposes, from entering the normal channels of trade and commerce.*

§ 937.8 *Agents.* The Secretary may name, by a designation in writing, any person, including any officer or employee of the Government, or name any bureau or division of the United States Department of Agriculture to act as his agent or representative in connection with any of the provisions hereunder.*

§ 937.9 *Effective time and termination.*—(a) *Effective time.* The provision hereof shall become effective at such time as the Secretary may declare above his signature hereto, and shall continue in force until terminated.

(b) *Termination.* (1) The Secretary may at any time terminate the provisions hereof as to all parties hereto by giving at least one day's notice by means of a press release, or in any other manner which the Secretary may determine.

(2) The Secretary shall terminate or suspend the operation of any or all of the provisions hereof whenever he finds that such operation obstructs or does not tend to effectuate the declared policy of the act.

(3) The Secretary shall terminate the provisions hereof at the end of any current marketing period upon the written request of handlers signatory hereto who submit evidence satisfactory to the Secretary that they handled, during such current marketing period, not less than sixty-seven (67) percent of the total volume of tomatoes handled by all signatory handlers during such period, but such termination shall be effective only if notice thereof is given on or before March 1 of such current marketing period.

(4) The Secretary shall terminate the provisions hereof at the end of any current marketing period whenever he finds that such termination is favored by a majority of the producers of tomatoes who, during such current marketing period, have been engaged in the production of tomatoes for market: *Provided*, That such majority have, during such period, produced for market more than

fifty (50) percent of the total volume of tomatoes produced for market during such period, but such termination shall be effective only if notice thereof is given on or before March 1 of such current marketing period.

(5) The provisions hereof shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

(c) *Proceedings after termination.* (1) Upon the termination of the provisions hereof, the members of the Administrative Committee then functioning shall continue as joint trustees, for the purpose of liquidating all funds and property then in the possession or under the control of the Administrative Committee, including claims for any funds unpaid or property not delivered at the time of such termination.

(2) The trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements or deliver all funds and property on hand, together with all books and records of the Administrative Committee and of the joint trustees, to such person as the Secretary shall direct; and shall, upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all of the funds or claims vested in the Administrative Committee or in the joint trustees.

(3) Any funds collected for expenses pursuant to section 937.4 hereof and held by such joint trustees or such person, over and above amounts necessary to meet outstanding obligations and the expenses incurred necessarily by the joint trustees or by such other person in the performance of the duties imposed hereunder, shall, as soon as practicable after the termination hereof, be returned to the handlers pro rata in proportion to their contributions made thereto pursuant to section 937.4 hereof.

(4) Any person to whom funds, property, or claims have been delivered by the Administrative Committee or its members upon direction of the Secretary as herein provided shall be subject to the same obligations and duties with respect to said funds, property, or claims as are hereinabove imposed upon the members of the Administrative Committee or upon the joint trustees.*

§ 937.10 *Duration of immunities.* The benefits, privileges, and immunities conferred upon any person by virtue hereof shall cease upon the termination hereof except with respect to acts done under and during the existence hereof.*

§ 937.11 *Separability.* If any provision of this order is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this order or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.*

§ 937.12 *Derogation.* Nothing contained herein is or shall be construed to

be in derogation of or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.*

In witness whereof, H. A. Wallace, Secretary of Agriculture of the United States, acting pursuant to the provisions of Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, for the purposes and within the limitations therein contained and not otherwise, does hereby execute and issue in duplicate this order under his hand and the official seal of the United States Department of Agriculture in the city of Washington, District of Columbia, on the 31st day of May 1939, and declares this order to be effective on and after 12:01 a. m., e. s. t., June 5, 1939.

[SEAL]

H. A. WALLACE,
Secretary of Agriculture.

[F. R. Doc. 39-1898; Filed, June 1, 1939;
12:09 p. m.]

[ACP-1939, Sup. No. 15]

PART 701—1939 AGRICULTURAL CONSERVATION PROGRAM BULLETIN
SUPPLEMENT NO. 15

Pursuant to the authority vested in the Secretary of Agriculture under sections 7 to 17, inclusive, of the Soil Conservation and Domestic Allotment Act, as amended, the 1939 Agricultural Conservation Program Bulletin¹ is hereby further amended as follows:

(1) Section 701.5 (m), as amended, is hereby further amended to read as follows:

(m) *Soil-building goal.* The soil-building goal for any farm shall be one unit of soil-building practices for each \$1.50 of the payment computed for the farm under section 701.8 (k): *Provided*, That in counties in the special wind-erosion area the soil-building goal for any farm other than an irrigated farm shall not be less than one unit for each \$7.50 of the total payment computed for the farm under section 701.8, excluding any payment computed with respect to the restoration land goal: *And provided further*, That for any wind-erosion farm the soil-building goal shall not be less than one unit for each \$2.00 of the total payment computed for the farm under section 701.8, and the total payment computed for a wind-erosion farm under section 701.8 shall be considered as a payment in connection with soil-building practices. Insofar as practicable, the county committee shall determine for individual farms practices to be followed in meeting the goal which are not routine farming practices on the farm, but which

are needed on the farm in order to conserve and improve soil fertility and prevent wind and water erosion and which will tend to accomplish the goals, if any, established for the county with respect to particular soil-building practices.

(2) Section 701.7, as amended, is hereby further amended by the addition of the following paragraph (1):

(1) Acre equivalents per unit—three acres.—Each three acres of the following shall be counted as one unit in the special wind-erosion area:

(1) Leaving on the land as a protection against wind-erosion the stalks of sorghums (including broomcorn or Sudan grass, classified as soil-depleting) where it is determined by the county committee that such cover is necessary as a protection against wind-erosion, and the operator's farming plan provides that such cover will be left on the land until the spring of 1940.

Done at Washington, D. C., this 31st day of May, 1939. Witness my hand and the seal of the Department of Agriculture.

[SEAL]

H. A. WALLACE,
Secretary of Agriculture.

[F. R. Doc. 39-1899; Filed, June 1, 1939;
12:09 p. m.]

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

BUREAU OF ANIMAL INDUSTRY

PART 94—REGULATIONS TO PREVENT THE INTRODUCTION INTO THE UNITED STATES OF RINDERPEST AND FOOT-AND-MOUTH DISEASE

[Amendment 5 to B. A. I. Order 366¹]

AMENDMENT OF ORDER TO PREVENT THE INTRODUCTION INTO THE UNITED STATES OF RINDERPEST AND FOOT-AND-MOUTH DISEASE

MAY 31, 1939.

§ 94.1 *Importation of domestic livestock or meats from countries where rinderpest or foot-and-mouth disease declared exists prohibited.* Under authority conferred upon the Secretary of Agriculture by Section 306 of the Tariff Act of 1930 the order to prevent the introduction into the United States of rinderpest or foot-and-mouth disease (B. A. I. Order 366), dated May 27, 1938, and effective June 1, 1938, as amended,² is hereby further amended by striking out the name "Great Britain" from said order, as I have determined that neither foot-and-mouth disease nor rinderpest now exists in said foreign country of Great Britain, and I have so officially notified the Secretary of the Treasury.

The effect of this amendment is to remove the prohibition against the importation from Great Britain of commodities specified in section 306 (a) of the Tariff Act of 1930.

¹ Amending 9 CFR 94.1.² 3 F.R. 1228, 3033 DI.

This amendment, which for purpose of identification is designated Amendment 5 to BAI Order 366 (9 CFR 94.1), shall be effective on and after June 1, 1939. (Sec. 306, 46 Stat. 689, Sec. 2, 32 Stat. 792, 45 Stat. 59; 19 U.S.C. 1306 (a), (b), and (c), 21 U.S.C. 111). [BAI Order 366, unnumbered paragraph 1, as amended by Amendment 1, August 27, 1938, Amendment 2, September 21, 1938, Amendment 3, November 15, 1938, Amendment 4, December 16, 1938 and Amendment 5, May 31, 1939]

Done at Washington this 31st day of May, 1939. Witness my hand and the seal of the Department of Agriculture.

[SEAL]

H. A. WALLACE,
Secretary of Agriculture.

[F. R. Doc. 39-1900; Filed, June 1, 1939;
12:10 p. m.]

[B. A. I. Order 370]

SUBCHAPTER D. EXPORTATION AND IMPORTATION OF ANIMALS AND ANIMAL PRODUCTS

PART 94—RINDERPEST AND FOOT-AND-MOUTH DISEASE; PROHIBITED AND RESTRICTED IMPORTATIONS¹

- Sec.
- 94.1 Existence of rinderpest or foot-and-mouth disease; importations prohibited.
- 94.1 (a) Domestic ruminants and swine and fresh meats derived therefrom.
- 94.1 (b) Fresh meat derived from wild ruminants or swine.
- 94.1 (c) Fresh organs, glands, extracts or secretions of ruminants or swine.
- 94.2 Domestic livestock or fresh meats that are refused entry to be exported or destroyed.
- 94.3 Foreign cured meat from countries where rinderpest or foot-and-mouth disease exists.
- 94.3 (a) Conditions under which importation permitted.
- 94.3 (b) Cured meats ineligible for importation to be exported or destroyed.
- 94.4 Garbage from foreign meat; disposition.
- 94.5 Dressed poultry from countries where rinderpest or foot-and-mouth disease exists; requirements for entry.

§ 94.1 *Existence of rinderpest or foot-and-mouth disease; importations prohibited—*(a) *Domestic ruminants and swine and fresh meats derived therefrom.* Notice is hereby given that I, H. A. Wallace, Secretary of Agriculture, have determined that the contagious and communicable disease of rinderpest or of foot-and-mouth disease exists in the following foreign countries: All countries on the Continent of Africa, Albania, Arabia, Argentina, Belgium, Bolivia, Brazil, Bulgaria, Ceylon, Chile, China, Chosen (Korea), Czechoslovakia, Danzig (Free City), Denmark, Ecuador, Federated Malay States, France, Germany, Greece, Hungary, India, Indochina, Iran (Persia), Iraq, Italy, Lithuania, Luxembourg, Netherlands, Palestine, Para-

¹ Amends 9 CFR Part 94 (B. A. I. Order 366, 3 F.R. 1228 DI) to read as set out herein.¹ 4 F.R. 1627 DI.

guay, Peru, Philippine Islands, Poland, Portugal, Rumania, Siam, Spain, Straits Settlements, Sweden, Switzerland, Syria, Turkey, Union of Soviet Socialist Republics (Russia), Uruguay, Yugoslavia, the islands of the Malay Archipelago, and the various islands of the Mediterranean; and I have so officially notified the Secretary of the Treasury. Wherefore, the importation into the United States of cattle, sheep, or other domestic ruminants or swine (including the entry into any port of the United States of any vessel having on board as sea stores such animals from the above-named countries) or of fresh, chilled, or frozen beef, veal, mutton, lamb, or pork, from the countries above named, is prohibited.

(b) *Fresh meat derived from wild ruminants or swine.* No fresh, chilled, or frozen meat or product derived from wild ruminants or swine, originating in any country named in paragraph (a) of this section, shall be entered into the United States.

(c) *Fresh organs, glands, or secretions of ruminants or swine.* No fresh organs, glands, extracts or secretions derived from domestic ruminants or swine, originating in any country named in paragraph (a) of this section, shall be entered into the United States except for pharmaceutical purposes. (Sec. 306, 46 Stat. 689; 19 U.S.C. 1306 (a), (b), and (c); Sec. 2, 32 Stat. 792, 45 Stat. 59; 21 U.S.C. 111)

§ 94.2 *Domestic livestock or fresh meats that are refused entry to be exported or destroyed.* Any animals or products specified in the preceding section 94.1, offered for entry and refused admission into the United States, shall be exported by the consignees thereof within 7 days or shall be destroyed in accordance with the directions of the Chief of the Bureau of Animal Industry. (Sec. 306, 46 Stat. 689; 19 U.S.C. 1306 (a), (b), and (c); Sec. 2, 32 Stat. 792, 45 Stat. 59; 21 U.S.C. 111)

§ 94.3 *Foreign cured meat from countries where rinderpest or foot-and-mouth disease exists—(a) Conditions under which importation permitted.* No cured meat or product² derived from domestic ruminants or swine, originating in any country named in section 94.1 (a) of this order, shall be entered into the United States unless the following conditions or requirements have been fulfilled:

(1) All bones shall have been completely removed in the country of origin.

(2) The said meat or product shall have been thoroughly cured by the application of dry salt or by soaking in a solution of salt.

(3) The said meat or product shall have been held in an unfrozen, fresh condition for at least 7 days immediately following the slaughter of the animals from which it was derived.

² This does not include any meat or product in hermetically sealed containers, which has been sterilized by heat.

(b) *Cured meats ineligible for importation to be exported or destroyed.* Products specified in the preceding paragraph (a), offered for importation, which do not meet the requirements of that paragraph, shall be exported by the consignees thereof within 7 days or shall be destroyed in accordance with the directions of the Chief of the Bureau of Animal Industry. (Sec. 306, 46 Stat. 689; 19 U.S.C. 1306 (a), (b), and (c); Sec. 2, 32 Stat. 792, 45 Stat. 59; 21 U.S.C. 111)

§ 94.4 *Garbage from foreign meat; disposition.* No garbage derived from meats or meat products originating in any country named in section 94.1 (a) of this order shall be unloaded from any vessel in the United States or within the territorial waters thereof: *Provided, however,* That such garbage, when contained in tight receptacles, may be so unloaded for incineration or proper disposal otherwise as directed by the Chief of the Bureau of Animal Industry, or it may be so unloaded under the direction of an inspector for transportation beyond said territorial waters for the purpose of dumping. (Sec. 306, 46 Stat. 689; 19 U.S.C. 1306 (a), (b), and (c); Sec. 2, 32 Stat. 792, 45 Stat. 59; 21 U.S.C. 111)

§ 94.5 *Dressed poultry from countries where rinderpest or foot-and-mouth disease exists; requirements for entry.* No dressed poultry offered for importation from any country named in section 94.1 (a) of this order shall be allowed entry unless the feet of such poultry have already been removed at a point above the spur or spur core, or are removed and destroyed or disinfected at the port of entry as directed by the Chief of the Bureau of Animal Industry. Such removal and destruction or disinfection shall be accomplished by the importer or his agent at his own expense. (Sec. 306, 46 Stat. 689; 19 U.S.C. 1306 (a), (b) and (c); Sec. 2, 32 Stat. 792, 45 Stat. 59; 21 U.S.C. 111)

This order, which for the purpose of identification is designated B. A. I. Order 370, shall become effective on June 16, 1939 and shall supersede B. A. I. Order 366 and all amendments thereto.

Done at Washington this 31st day of May 1939.

Witness my hand and the seal of the Department of Agriculture.

[SEAL] H. A. WALLACE,
Secretary of Agriculture.

[F. R. Doc. 39-1901; Filed, June 1, 1939; 12:10 p. m.]

TITLE 24—HOUSING CREDIT FEDERAL HOUSING ADMINISTRATION

AMENDMENT OF REGULATION NO. 19¹ OF THE REGULATIONS ISSUED BY THE ADMINISTRATOR IN CONNECTION WITH PROPERTY IMPROVEMENT LOANS UNDER TITLE I OF THE NATIONAL HOUSING ACT AMENDMENTS OF 1938

When a lending institution purchases an obligation representing a loan or ad-

vance of credit for eligible purposes, or disburses the proceeds to one other than the borrower it shall not so disburse the proceeds until it has obtained a completion or installation certificate signed by the borrower, stating that the work has been done or the installation made: *Provided, however,* that the proceeds may be disbursed in escrow or into a special account to the credit of one other than the borrower. Funds so disbursed shall not be released from the escrow or special account, nor shall such obligations be reported for insurance, until a completion certificate signed by the borrower has been obtained.

The Amendment contained herein is hereby declared to have the same force and effect as if included in and made a part of each Contract of Insurance, is effective as of the date hereof and expires July 1, 1939.

[SEAL] STEWART McDONALD,
Federal Housing Administrator.

JUNE 1, 1939.

[F. R. Doc. 39-1889; Filed, June 1, 1939; 10:28 a. m.]

TITLE 30—MINERAL RESOURCES NATIONAL BITUMINOUS COAL COMMISSION

[General Docket No. 15]

IN THE MATTER OF THE ESTABLISHMENT OF MINIMUM PRICES AND MARKETING RULES AND REGULATIONS

DETERMINATION OF THE WEIGHTED AVERAGE OF THE TOTAL COSTS OF THE TONNAGE PRODUCED WITHIN MINIMUM PRICE AREAS 3, 4, AND 5

Order

The Commission having determined the weighted average of the total costs of the tonnage for each of Minimum Price Areas 3, 4, and 5 on August 19, 1938, pursuant to Notice and Hearing in General Docket No. 15,² and as provided by Section 4, II (a) of the Bituminous Coal Act of 1937, and

Having submitted to the District Board for each District such determination of the weighted average of the total costs of the Minimum Price Area in which such District is located, directed said District Boards to propose minimum prices in conformity with the provisions of Section 4, II (a) of the Act on the basis of the weighted average of the total costs for the respective Minimum Price Area as determined by the Commission, which proposals of minimum prices were subsequently made by the District Boards and approved or modified by the Commission to serve as a basis for the coordination of minimum prices provided for by Section 4, II (b) of the Act, and

At the hearing aforesaid relating to said determinations of the weighted

¹ 3 F.R. 417 DI.

² 4 F.R. 1192 DI.

average of the total costs of the tonnage produced within each of the said minimum price areas certain composite reports were introduced in evidence, but due to certain litigation and injunctions, the individual cost reports of producers, upon which said composite exhibits were based, were not available for inspection by interested parties or for introduction in evidence, and said injunctions having been dissolved and the Commission having made said individual cost reports of producers available for inspection by interested parties or for introduction in evidence commencing on the 6th day of February 1939, resumed said hearing, after notice, on the 23rd day of February 1939, in Denver, Colorado, as to Minimum Price Area 4, and on March 6, 1939, in Washington, D. C., as to Minimum Price Areas 3 and 5, at which hearings all interested parties were afforded opportunity to introduce affirmative evidence and to cross-examine witnesses as to the correctness of the composite reports theretofore introduced in evidence in this proceeding, and

Thereafter, after due and reasonable notice, the Commission, on the 27th day of March 1939, commenced a final hearing in the matter of the determinations of the weighted average of the total costs of the tonnage produced within Minimum Price Areas 1, 2, 3, 4, 5, 6, 7, 9, and 10, at which final hearing all of the evidence upon which the Commission's determinations of the weighted average of the total costs of Minimum Price Areas 3, 4 and 5 were based, together with the evidence received in the hearings of February 23, 1939, and March 6, 1939, was received in evidence, and all interested parties having been afforded an opportunity to make all proper motions relating to the record of said prior hearings, and being afforded a full opportunity to be heard relating to the weighted average of the total costs per net ton of the tonnage produced within each of said Minimum Price Areas 3, 4 and 5, which final hearing was concluded on the 15th day of April 1939, and the evidence being adduced, and upon consideration thereof, the Commission made Findings of Fact and Conclusions as to the weighted average of the total costs of the tonnage produced within each of Minimum Price Areas 3, 4 and 5 in the calendar year 1936 adjusted as provided by Section 4, II (a) of the Act, which Findings of Fact and Conclusions are on file in the Office of the Secretary of the Commission, Washington, D. C., and by this reference incorporated herein and made a part hereof:

Now, therefore, pursuant to the provisions of the Bituminous Coal Act of 1937, the National Bituminous Coal Commission, in conformity with the "Findings of Fact and Conclusions," dated May 25, 1939, made and filed herein, finds that the weighted average of the

total costs of the tonnage for each minimum price area is as follows:

Per net ton

Minimum Price Area 3 (District 13)	\$2.438
Minimum Price Area 4 (District 14)	3.6296
Minimum Price Area 5 (District 15)	2.0481

That the Secretary of the Commission be and he is hereby directed to cause a copy of this Order, together with the aforesaid "Findings of Fact and Conclusions," to be published forthwith in the Federal Register; and to cause copies of same to be mailed to the Secretary of each District Board, to the Consumers' Counsel and to all parties who have entered their appearances herein; and shall cause copies thereof to be made available for inspection by all interested parties at the Office of the Secretary of the Commission, Washington, D. C., and at each of the Statistical Bureaus of the Commission; and to cause copies of this order to be mailed to all code members in each of the several districts.

By order of the Commission.

Dated this 25th day of May 1939.

[SEAL] F. WITCHER McCULLOUGH,
Secretary.

FINDINGS OF FACT AND CONCLUSIONS OF THE COMMISSION

Pursuant to the provisions of an act of Congress approved April 26, 1937, entitled "An Act to regulate interstate commerce in bituminous coal and for other purposes" (Public No. 48, 75th Congress, 1st Sess.), known as the "Bituminous Coal Act of 1937," and hereinafter referred to as the "Act," the National Bituminous Coal Commission, hereinafter referred to as the "Commission," under and by virtue of the authority granted in Section 4 II (a) of the Act, on the 19th day of April, 1938, issued its Order No. 240, ordering and directing the District Boards for Districts 13 (except Van Buren, Warren, and McMinn Counties, Tennessee), 14, and 15, within Minimum Price Areas 3, 4, and 5 to determine the weighted average of the total costs of the ascertainable tonnage produced within each of said districts during the calendar year 1936, and to adjust the average costs so determined as may be necessary to give effect to any changes substantially affecting costs, exclusive of seasonal changes, which may have been established since January 1, 1936, said determinations, together with the computations upon which same were based, to be submitted to the Commission on or before April 30, 1938.

Said order was published in the Federal Register under date of April 22, 1938, and copies of said order were mailed to each of the Secretaries of the District Boards within Minimum Price Areas 3, 4, and 5, as directed in said order. Copies of said orders were also mailed to the Office of Consumers' Counsel, Washington, D. C., to the Statistical Bureaus of the Commission within each of the Dis-

tricts within Minimum Price Areas 3, 4, and 5, and to each known code member within each of the Districts within each of said Minimum Price Areas.

Upon receipt of said order by the several District Boards within Minimum Price Areas 3, 4, and 5, said District Boards, as directed in said order, determined the weighted average of the total costs of the ascertainable tonnage produced within the respective districts in the calendar year 1936, adjusted same to give effect to any changes substantially affecting costs, exclusive of seasonal changes, which may have been established since January 1, 1936, and submitted such determinations, together with the computations upon which same were based, to the Commission.

Subsequent to the receipt of such determinations by the Commission, the Commission, on the 27th day of June 1938, issued its order giving notice to all interested parties of a hearing to be held relative to said cost determination as made and submitted to the Commission by the District Boards for Districts 13, 14, and 15, said hearing to be held on the 13th day of July, 1938, in the Hearing Room of the Commission at 15th and Eye Streets, Washington, D. C. As expressed in the face of said order, said hearing was to be held for the purpose of receiving evidence relating to the total costs per net ton of the tonnage of bituminous coal produced in the calendar year 1936 in each of the districts within Minimum Price Areas 3, 4, and 5, and evidence relating to any change or changes in wage rates, hours of employment, or other factors, exclusive of seasonal changes, substantially affecting costs which may have been established since January 1, 1936, in order to enable the Commission to determine the weighted average of the total costs of the tonnage for Minimum Price Areas 3, 4, and 5, as adjusted, to the end that such determinations may serve as the basis for the proposal of minimum prices as provided in Section 4 II (a) of the Act.

Said order giving notice of said hearing contained the statement that the respective District Boards within Minimum Price Areas 3, 4, and 5, in compliance with Commission Order No. 240, had submitted to the Commission their determinations of the adjusted weighted average of the total costs of the total ascertainable tonnage produced in their respective districts during the calendar year 1936, and specifically set forth in the face of said order the amount of such determinations, to wit:

District:	District board's determination (per net ton)
13	\$2.4238
14	3.6296
15	2.0481

Said order giving notice of said hearing also contained a statement that the Bureau of Research and Statistics of the Commission had submitted to the

Commission computations of the weighted average costs of the total ascertainable tonnage produced in each of the districts within Minimum Price Areas 3, 4, and 5, and within each of said Minimum Price Areas for the nine months' period (except as otherwise specified), April to December 1937, inclusive, the latest period for which cost

data were available at the increased wage rates that became effective April 1, 1937, said costs being further adjusted to take account of known changes in Federal unemployment taxes effective January 1, 1938, and the known effects of the tax imposed by the Bituminous Coal Act of 1937. Such computations, as expressed in the face of said order, are as follows:

DISTRICT	1936 tonnage	Actual 1937 costs		Actual costs plus two adjustments for unemployment and coal act taxes ¹
		Period	Per ton cost	
No. 13.....	12,543,778	June-December ²	\$2.4691	\$2.48
No. 14.....	1,936,412	January-December ²	3.6049	3.63
No. 15.....	7,050,077	April-December.....	2.0473	2.06
MINIMUM PRICE AREA				
Area 3.....	12,543,778	(³).....	2.4691	2.48
Area 4.....	1,936,412	(³).....	3.6049	3.63
Area 5.....	7,050,077	(³).....	2.0473	2.06

¹ Rounded to nearest cent.

² April and May omitted because of prolonged strike.

³ Actual costs for 9 months' period April to December, 1937, combined with 3 months' cost for January to March, 1937, so adjusted as to raise the 3 months' costs to the level of the wage scale effective Apr. 1.

⁴ For period of 1937 covered, see above.

As expressed in the face of said order, the Bureau of Research and Statistics recommended to the Commission that the costs, as above set forth, be accepted as the best available evidence of the adjusted costs, subject to such further adjustments as may be proved to be necessary in order to take account of additional known factors of increase or decrease not fully reflected therein.

Due and reasonable notice of said hearing having been given all interested parties, said cause came on for hearing before the Commission on the 13th day of July 1938, at the hour and place as specified in the original order, to wit, at 10:00 a. m. at the Hearing Room of the Commission, 15th and Eye Streets Washington, D. C.; and, after said hearing had been duly and formally opened and all interested parties desiring to appear had entered their appearance in said cause, the Commission proceeded to receive evidence relative to the cost determinations as made and submitted to the Commission by the respective District Boards within Minimum Price Areas 3, 4, and 5, and as made and submitted to the Commission by the Bureau of Research and Statistics of the Commission.

The hearing held upon the above and foregoing notice having been duly concluded and the evidence adduced at said hearing having been duly reported and filed with the Commission, the Commission, after due consideration of same and being fully advised in the premises, made findings of fact relative to the weighted average of the total costs of the tonnage produced within Minimum Price Areas 3, 4, and 5 during the calendar year 1936, as adjusted. Said findings of fact are evidenced by a document entitled "Findings of Fact and Conclusions" to which reference is hereby made.

In conformity with said findings of fact, the Commission on the 19th day of August 1938, issued its order determining the weighted average of the total costs of tonnage produced within Minimum Price Areas 3, 4, and 5, adjusted so as to give effect to any changes in wage rates, hours of employment, and other factors substantially affecting costs, exclusive of seasonal changes, in order that same should reflect, as accurately as possible, any change, or changes, which had been established since January 1, 1936. As contained in said order the determinations of the weighted average of the total costs of the tonnage produced within Minimum Price Areas 3, 4, and 5, adjusted as aforesaid, are as follows:

	Per net ton
Minimum Price Area 3 (District 13).....	\$2.474
Minimum Price Area 4 (District 14).....	3.617
Minimum Price Area 5 (District 15).....	2.049

Said order directed the Secretary of the Commission to cause a copy of same to be mailed to the Secretary of each District Board and to the office of Consumers' Counsel, Washington, D. C. The Secretary of the Commission was also directed to cause a copy of said order to be published in the FEDERAL REGISTER; to cause the weighted average figures of the aforesaid total costs, as determined by the Commission, to be made available to the public; and to cause to be placed in each of the Statistical Bureaus within the aforesaid Minimum Price Areas and at the office of the Secretary of the Commission, at Washington, D. C., three copies of said order and three copies of the document entitled "Findings of Fact and Conclusions" upon which said order was based, and one copy of the official transcript of the evidence upon which said document entitled "Findings of

Fact and Conclusions" was predicated. Said directions were complied with by the Secretary of the Commission.

The Commission on the 6th day of December 1938, issued its order giving notice of the reopening of the hearing relative to the weighted average of the total costs of the tonnage produced within Minimum Price Areas 1, 2, 3, 4, and 5. Said order directed the Secretary of the Commission to cause the verified cost reports of the individual producers within each of Minimum Price Areas 1, 2, 3, 4, and 5, as submitted to the Commission pursuant to Orders Nos. 15 and 29, to be made available for inspection during business hours on and after December 15, 1938, at the offices of the Commission, Washington, D. C., by interested parties having entered their appearance in said proceeding. Said order giving notice of the reopening of said hearing also directed the Secretary of the Commission to cause a copy thereof to be published in the FEDERAL REGISTER and in two consecutive issues of a newspaper of general circulation in each of the districts within Minimum Price Areas 1, 2, 3, 4, and 5; to cause copies thereof to be mailed to each code member, to the office of Consumers' Counsel, to the Secretary of each District Board, and to all parties having entered their appearance in said cause; and to cause copies thereof to be made available for inspection by interested parties at each of the Statistical Bureaus of the Commission. Said directions were complied with by the Secretary of the Commission.

The Commission on the 9th day of December, 1938, issued its order giving notice that the place at which the verified cost reports of the individual producers within Minimum Price Area 4 would be made available for inspection by interested parties had been changed. Said order changed the place of inspection of said cost reports from the offices of the Commission, at Washington, D. C., to the offices of the Statistical Bureau of the Commission, Central Savings Bank Building, Denver, Colorado.

Said order directed the Secretary of the Commission to cause a copy thereof to be published in the FEDERAL REGISTER and in two consecutive issues of a newspaper having a general circulation in District 14, to cause copies thereof to be mailed to each code member, to the office of Consumers' Counsel, to the Secretary of each District Board, and to all parties having entered their appearance in said proceeding; to cause copies thereof to be made available for inspection by interested parties at each of the Statistical Bureaus of the Commission. Said directions were complied with by the Secretary of the Commission.

The Commission on the 31st day of January 1939, issued its order giving notice that the reopened hearing relative to the weighted average of the total

costs of the tonnage produced within Minimum Price Areas 4, 6, 7, 9, and 10 would be convened at the Albany Hotel, Denver, Colorado, on the 23rd day of February 1939, at 10:00 a. m. Said order further gave notice that the verified cost reports of the individual producers within each of Minimum Price Areas 4, 6, 7, 9, and 10, as submitted to the Commission pursuant to Orders Nos. 15 and 29, would be made available for inspection by interested parties on and after February 6, 1939, at the offices of the Commission, Central Savings Bank Building, Denver, Colorado, and that all interested parties would be afforded further opportunity to introduce affirmative evidence in said proceeding and to cross-examine witnesses as to the correctness of the composite reports previously introduced in evidence in said proceeding.

Said order directed the Secretary of the Commission to cause a copy thereof to be published in the *FEDERAL REGISTER* and in two consecutive issues of a newspaper having a general circulation in each of the districts within Minimum Price Areas 4, 6, 7, 9, and 10; to cause copies thereof to be mailed to each code member, to the office of Consumers' Counsel, to the Secretary of each District Board, and to all parties having entered their appearance in said cause; and to cause copies thereof to be made available for inspection by interested parties at each of the Statistical Bureaus of the Commission.

The Secretary of the Commission complied with the aforesaid directions in said order, and on the 6th day of February 1939, placed the verified cost reports of the individual producers within Minimum Price Areas 4, 6, 7, 9, and 10 in the offices of the Commission, Central Savings Bank Building, Denver, Colorado, where they were open to full inspection and examination by all interested parties having entered an appearance in said cause.

Due and reasonable notice of said reopened hearing having been given all interested parties, said cause came on for further hearing before the Commission on the 23rd day of February, 1939, at the hour and place as specified in said order, to wit, at 10:00 A. M. at the Albany Hotel, Denver, Colorado; and, after said hearing had been duly and formally opened and all interested parties desiring to appear had entered their appearances in said cause, the Commission proceeded to receive further evidence relative to the weighted average of the total costs of the tonnage produced within Minimum Price Areas 4, 6, 7, 9, and 10.

At the conclusion of said reopened hearing, said hearing was duly and formally closed, and the evidence adduced at said reopened hearing having been duly reported, was filed with the Commission.

The Commission on the 31st day of January, 1939, also issued its order giving notice that the verified cost reports of the individual producers within each of

Minimum Price Areas 1, 2, 3, and 5, as submitted to the Commission pursuant to Orders Nos. 15 and 29, would be made available for inspection by interested parties on and after February 6, 1939, at the offices of the Commission, Washington, D. C. Said order directed the Secretary of the Commission to cause a copy thereof to be published in the *FEDERAL REGISTER* and in two consecutive issues of a newspaper having a general circulation in each of the Districts within Minimum Price Areas 1, 2, 3, and 5; to cause copies thereof to be mailed to each code member, to the Consumers' Counsel, to the Secretary of each District Board, and to all parties having entered their appearance in said cause; and to cause copies thereof to be made available for inspection by interested parties at each of the Statistical Bureaus of the Commission.

The Secretary of the Commission complied with the aforesaid directions in said order, and on the 6th day of February, 1939, placed the verified cost reports of the individual producers within Minimum Price Areas 1, 2, 3, and 5 in the offices of the Commission, Washington, D. C., where they were opened to full inspection and examination by all interested parties having entered an appearance in said cause.

The Commission on the 14th day of February 1939, issued its order giving notice that the reopened hearing relative to the weighted average of the total costs of the tonnage produced within Minimum Price Areas 1, 2, 3, and 5 would be convened at the hearing room of the Commission in the Walker Building, Washington, D. C., on the 6th day of March 1939, at 10:00 a. m. Said order further gave notice that all interested parties would be afforded further opportunity to introduce affirmative evidence in said proceeding and to cross-examine witnesses as to the correctness of the composite reports previously introduced in evidence in said proceeding.

Said order directed the Secretary of the Commission to cause a copy thereof to be published in the *FEDERAL REGISTER* and in two consecutive issues of a newspaper having a general circulation in each of the districts within Minimum Price Areas 1, 2, 3, and 5; to cause copies thereof to be mailed to each code member, to the office of the Consumers' Counsel, to the Secretary of each District Board, and to all parties having entered their appearance in said proceeding; and to cause copies thereof to be made available for inspection by interested parties at each of the Statistical Bureaus of the Commission. Said directions were complied with by the Secretary of the Commission.

Due and reasonable notice of said reopened hearing having been given to all interested parties, said cause came on for further hearing before the Commission on the 6th day of March, 1939, at the hour and place as specified in said order, to wit, at 10:00 A. M., at the

hearing room of the Commission in the Walker Building, Washington, D. C., and, after said hearing had been duly and formally opened, and all interested parties desiring to appear had entered their appearances in said cause, the Commission proceeded to receive further evidence relative to the weighted average of the total costs of the tonnage produced within Minimum Price Areas 1, 2, 3, and 5, until the 8th day of March, 1939, when said hearing was adjourned.

The Commission, on the 9th day of March, 1939, issued its order giving notice of a final hearing to be held in the matter of the determinations of the weighted average of the total costs of the tonnage produced within Minimum Price Areas 1, 2, 3, 4, 5, 6, 7, 9, and 10 (General Docket 15), said hearing to be held in the hearing room of the Commission, Walker Building, Washington, D. C., on the 27th day of March 1939, at 10:00 A. M.

As expressed in the face of said order, said hearing was to be held for the purpose of receiving evidence relative to the determinations by the Commission of the weighted average of the total costs per net ton, of the tonnage produced within each of Minimum Price Areas 1, 2, 3, 4, 5, 6, 7, 9, and 10.

Said order further provided that at said hearing the Commission would entertain motions to strike from the record any of the evidence theretofore introduced at the prior hearings in said matter, including the transcripts of testimony made at such hearings and all exhibits introduced in evidence at such hearings; that all interested parties would be afforded an opportunity to cross-examine any witness, or witnesses, as to any evidence given in the prior hearings, and would be afforded opportunity to offer further affirmative evidence relating to the weighted average of the total costs per net ton, of the tonnage produced within any of said Minimum Price Areas, and to otherwise raise any proper objection, or exception, to any portion, or portions, of the documents entitled "Findings of Fact and Conclusions" issued by the Commission containing its determinations of the weighted average of the total costs of the tonnage per net ton, produced within each of said Minimum Price Areas.

Said order further provided that, upon the conclusion of said hearing, the Commission would, upon consideration of all the evidence in General Docket No. 15 relating to the weighted average of the total costs of the tonnage produced within the several Minimum Price Areas, issue findings of fact and conclusions with respect to the determinations of the weighted average of the total costs of the tonnage produced within each of Minimum Price Areas 1, 2, 3, 4, 5, 6, 7, 9, and 10.

Said order giving notice of said final hearing directed the Secretary of the Commission to cause a copy of same to be published in the *FEDERAL REGISTER* and in

two consecutive issues of a newspaper having a general circulation in each of the districts within the aforesaid Minimum Price Areas and to cause copies of same to be mailed to each code member, to the office of Consumers' Counsel, to the Secretary of each District Board, and to all parties having entered their appearance in said cause. The Secretary of the Commission was further directed to cause a copy of said order to be made available for inspection by interested parties at the office of the Secretary of the Commission, Washington, D. C., and at each of the Statistical Bureaus of the Commission.

The aforesaid directions in said order were complied with. A copy of said order was published in the *FEDERAL REGISTER* of date March 11, 1939, and copies of same were mailed to the Secretaries of the District Boards; to the Statistical Bureaus of the Commission; to all code members as recorded upon lists maintained in the Code Membership Section of the Commission; to all interested parties having entered their appearance in said cause; and to the office of Consumers' Counsel, Washington, D. C. A copy of said order was published in two consecutive issues of the *Terre Haute Tribune*, *Terre Haute, Indiana*; the *Huntington Advertiser*, *Huntington, West Virginia*; the *Owensboro Messenger*, *Owensboro, Kentucky*; the *Pittsburgh Press*, *Pittsburgh, Pennsylvania*; the *Charleston Gazette*, *Charleston, West Virginia*; the *Dominion News*, *Morgantown, West Virginia*; the *Salt Lake Tribune*, *Salt Lake City, Utah*; the *Altoona Mirror*, *Altoona, Pennsylvania*; the *Cleveland Plain Dealer*, *Cleveland, Ohio*; the *Illinois State Register*, *Springfield, Illinois*; the *Albuquerque Journal*, *Albuquerque, New Mexico*; the *Arkansas Democrat*, *Pulaski County, Arkansas*; the *Flint Journal*, *Flint, Michigan*; the *Birmingham News*, *Birmingham, Alabama*; the *Seattle Post-Intelligencer*, *Seattle, Washington*; the *Great Falls Daily Tribune*, *Great Falls, Montana*; the *Des Moines Register*, *Des Moines, Iowa*; the *Kansas City Journal*, *Kansas City, Missouri*; the *Daily Sentinel*, *City of Grand Junction, Colorado*; the *Casper Tribune-Herald*, *Casper, Wyoming*; and the *Denver Post*, *Denver, Colorado*, newspapers having a general circulation in each of the districts within Minimum Price Areas 1, 2, 3, 4, 5, 6, 7, 9, and 10.

Due and reasonable notice of said hearing having been given all interested parties, said cause came on for final hearing before the Commission on the 27th day of March 1939, at the hour and place as specified in said order, to wit, at 10:00 A. M. in the hearing room of the Commission, Washington, D. C.; and, after said hearing had been duly and formally opened and all interested parties desiring to appear had entered their appearances in said cause, the Commission proceeded to receive evidence relative to the weighted average of the total costs of the ascertainable tonnage produced with-

in Minimum Price Areas 1, 2, 3, 4, 5, 6, 7, 9, and 10.

There was offered and received in evidence as Exhibit C the record of the proceedings relating to the determinations of the weighted average of the total costs per net ton of the tonnage produced in each of the several minimum price areas contained in Docket No. 15. That portion of Docket No. 15 relating to the determinations of the weighted average costs included the Order of the Commission instituting the proceedings in General Docket No. 15, the Orders for and Notices of Hearing held therein together with Proofs of Service thereof, the official transcripts of the testimony adduced at such hearings, all documentary evidence offered or received at said hearings, the Findings of Fact and Conclusions of the Commission made upon the evidence adduced in said hearings, and the Orders of the Commission making its determinations thereon. Exhibit C was received in evidence for the purpose of including in the record all of the evidence upon which the Commission made its determinations of the weighted average of the total costs per net ton of the tonnage produced in the Minimum Price Areas 1, 2, 3, 4, 5, 6, 7, 9, and 10 subject to the right of all interested parties to move to strike from the record any of the evidence contained in Exhibit C, or to make any proper motion with respect thereto and subject to the right of interested parties to cross-examine witnesses who offered such testimony.

All subsequent exhibits received in evidence are marked consecutively C-1, C-2, etcetera. Exhibits hereinafter referred to, bearing a numerical designation not prefixed by the letter "C", constitute the documentary evidence contained in Exhibit C.

Said hearing having been duly and regularly closed and the evidence adduced at same having been duly reported and filed with the Commission, the Commission after due consideration of same and being fully advised in the premises, makes this its findings as to the facts and its conclusions drawn therefrom relative to the weighted average of the total costs of the ascertainable tonnage produced within each of Minimum Price Areas 3, 4, and 5.

Section 4 II (a) of the Act requires that each District Board shall determine, from cost data submitted by the proper Statistical Bureau of the Commission, "the weighted average of the total costs of the ascertainable tonnage produced in the district in the calendar year 1936," and that the District Boards shall adjust the average costs so determined as may be necessary to give effect to any changes in wage rates, hours of employment, or other factors substantially affecting costs, exclusive of seasonal changes, so as to reflect as accurately as possible any change or changes which may have been established since January 1, 1936. Such determination and the computations upon

which it is based are then to be submitted to the Commission by each District Board. The Commission is thereupon required to determine the weighted average of the total costs of the tonnage for each minimum price area in the calendar year 1936, adjusted as aforesaid, and to transmit such determinations to the District Boards within such minimum price area, to be taken as a basis, to be effective until changed by the Commission, for the proposal and establishment of minimum prices.

We construe the phrase "ascertainable tonnage" to include the entire tonnage of both "commercial mines" and "captive mines" of code members and non-code members, as these terms are hereinafter defined.

In order to obtain cost data for the calendar year 1936 for submission to the District Boards, the Commission collected reports from coal producers in each of the respective Districts on the costs of production, administration, and selling. Order No. 15, issued July 15, 1937 (Exhibit No. 1) directed that all producers of bituminous coal file with the Statistical Bureau of their respective districts Cost Form No. 1 (Exhibit No. 2), for mines having a daily capacity of more than fifty net tons; and Cost Form No. 1-A (Exhibit No. 3), for mines having a daily capacity of less than fifty net tons. These forms related to bituminous coal produced in the calendar year 1936. In addition to the forms themselves, the Commission issued a letter of instructions to all producers (Exhibit No. 826), under date of July 20, 1937.

The Commission also collected reports from coal producers on the cost of production, administration, and selling for 1937, similar to those collected for the calendar year 1936. Order No. 29, issued July 30, 1937 (Exhibit No. 5), directed producers to file with the Statistical Bureaus of their respective districts monthly returns on Cost Form No. 2 (Exhibit No. 6), for mines with a daily capacity of over fifty tons and on Cost Form No. 2-A (Exhibit No. 7), for mines with a daily capacity of less than fifty tons.

Section 4 II (a) of the Act provides that the computation of the total costs shall include the cost of labor, supplies, power, taxes, insurance, workmen's compensation, royalties, depreciation and depletion (as determined by the Bureau of Internal Revenue in the computation of the Federal Income Tax), and all other direct expenses of production, coal operators' association dues, district board assessments for board operating expenses only levied under the code, and reasonable costs of selling and the cost of administration. All of these elements of cost are included in the various items on the cost forms. Certain of these specified items were broken down into subdivisions in order to facilitate the furnishing of cost data by the producers. The cost items on the form are: Mine labor, subdivided into day men, mining,

yardage and deadwork, mine supervisory and clerical employees; Mine Supplies, subdivided into all supplies, power purchased, mine fuel; Other Mine Expenses, subdivided into salaries and expenses of other employees at mine, mine office expenses; Other Operating Charges, subdivided into taxes on mine property and equipment and other taxes in lieu thereof, insurance, depreciation, royalties paid or accrued, operators' association dues and assessments, compensation insurance paid or accrued, vocational disease insurance paid or accrued, district board expense—including assessments, depletion, social security tax, unemployment tax, tax paid Bituminous Coal Conservation Act; Selling Costs,* subdivided into salaries and/or commissions and expenses—salesmen, commissions paid or accrued—sales agents, commissions and/or discounts allowed wholesalers, salaries and expenses—selling officers, salaries and expenses—clerical, rent and office expenses directly connected to selling efforts, advertising, sales taxes, tax paid Bituminous Coal Conservation Act, depreciation—office equipment and automobiles, all other selling expenses; Administrative Expenses, subdivided into salaries and expenses—officers except selling officers, salaries and expenses—clerical, office expenses and rent, legal, depreciation—office equipment, corporate and privilege tax, and all other administrative expenses. The reverse side of the form contained detailed instructions.

The cost form also provides for a report by the respective producers of their gross realization for the period covered by the report.

All reports submitted by the producers were duly verified, and the cost forms and affidavits were given key code numbers for identification purposes.

Upon receipt by the Statistical Bureaus, the cost reports were carefully checked by competent personnel, the respective Directors of Statistics of the various Bureaus and the members of their staff, pursuant to instructions given by the Bureau of Research and Statistics at Washington. The supervision of the collection and analysis of cost data at Washington was under the immediate direction of an expert experienced in the collection and analysis of cost data. He was in daily contact with the various directors of statistics. As the reports came in to the respective bureaus they were examined for mathematical accuracy. If any inaccuracies were disclosed, they were noted on the duplicate copy of the cost report and the producer was notified. The reports in each instance were then re-examined to ascer-

tain whether or not any of the vari-out items on the cost form were out-of-line with similar items on cost forms of other producers in like circumstances. There were no definite tolerance limits or specific standards for defining out-of-line items. This was left in the main to the judgment of the Director of Statistics and his staff. When items deemed to require investigation were discovered, the Statistical Bureau communicated with the producer and asked for explanation of the out-of-line items. Such correspondence with the producers was attached to the cost forms and constituted part of the underlying data, which, together with the cost forms and cost plates, were made available for public inspection in the course of the hearing. In most instances, the producer when questioned about such items justified the amount of the item, giving a detailed explanation therefor. In some instances the producers, when questioned about particular items authorized a change in the amount of such item, or a deletion from the cost form. In all cases the explanation or the authorized change or deletion was sworn to by the producer on a form furnished him for that purpose. Wherever it appeared that items such as interest, bad debts, income taxes, and other items not properly includable in costs, had been reported, such items were deleted from the cost report.

After the cost reports were checked and were acceptable for tabulation they were classified as to "commercial" mines and as to "captive" mines (as these terms are hereinafter defined) and were thus tabulated on cost plates (Exhibit No. 21), in accordance with pertinent sub-district arrangements. This facilitated the ready grouping and the making of composite cost statements from the mass of individual cost forms received. The tabulation of the data contained in the cost reports on these cost plates presents a composite picture of the total costs of the respective districts. All of the items of cost listed vertically on the cost forms were listed horizontally on the cost plates so that the cost plates covered every item of cost listed on the cost forms proper.

Since idle-month costs are a part of the cost of production and inseparable in their effect upon costs from idle-day costs, reports of this nature were included in the 1936 cost computations of the Statistical Bureaus. Idle-time costs as to particular mines were, however, only included when those mines contributed some tonnage during that year. Such inclusion of idle-time costs is in conformity with the requirement of the Act that the determinations of the weighted average costs for the calendar year 1936 are to be based only on ascertainable tonnage.

Inasmuch as the costs for the year 1937 were collected on a monthly basis, the idle-time costs were included in the same manner. Such costs were included only when the mine had actually pro-

duced tonnage during any month in the year 1937. Thus idle-time costs were not tabulated until such time as the mine contributed to the tonnage of 1937. Thereafter, idle-time costs were tabulated for all subsequent months throughout the year. This procedure was adopted because it was statistically impractical to continually reopen tabulations for a particular month so as to include in that month the idle-time costs of a mine which later was included in the ranks of the producing mines. To whatever extent the tabulation did not include such idle-month costs of mines at the beginning of the year, the statistics for 1937 are slightly below the actual expenses incurred. However, the effect of that procedure on the total cost is negligible.

Composite tabulations showing weighted averages of cost data for 1936 and for the last nine months of 1937 of the ascertainable tonnage produced in the various districts were prepared by the Bureau of Research and Statistics of the Commission from compilations made by the Statistical Bureaus. These data were transmitted to the District Boards. These were the composite reports introduced in evidence as a part of Exhibit C. The composite reports listed all of the items of cost appearing on the cost form. The composite reports include the weighted average costs for commercial and captive tonnage combined, and also show separately the weighted average costs for commercial mines only and captive mines only, and for mines over fifty tons daily and under fifty tons daily. The classifications "commercial" and "captive" mines, adopted solely for the purpose of statistical analysis, were used in deference to industry usage in order to distinguish between consumer-affiliated business and ordinary commercial business.

Each mine was classified on the basis of the producer's statement of the disposition of his coal. Mines in which the tonnage reported in the item on the cost forms as "controlled" sales, plus the item of exempt coal and the item of mine fuel, constituted forty per cent or more of the total output of the mine, were classified as "captive." All other mines were included in the classification "commercial." The principal basis of classification was the item "controlled" sales. This is defined in instructions on the back of the cost form, as follows:

"3. Total 'controlled' sales. Include under this item all sales for consumption by the buyer (a) where the relationship between producer and buyer is that of wholly-owned or controlled parent and subsidiary corporation; (b) where there is common ownership or control of the producer and buyer in a third party; (c) where the relation between producer and buyer for any reason is such that the sale is noncompetitive."

The reports received in response to Order No. 15 cover approximately 95.38

*The items of selling costs here listed (items 13a to 13k of the 1936 Cost Form No. 1) refer to the coal sold commercially (item 4 coal—"all other sales"). In addition, the form called for the following selling costs on the "controlled" sales (known as item 3 coal): sales taxes (item 3) and tax paid on item 3—Bituminous Coal Conservation Act of 1935. These were designated as items 15a and 15b.

per cent of the total production of bituminous coal in 1936, as determined by the United States Bureau of Mines (Ex. 4).

The individual cost reports for the year 1936 and the last nine months of 1937, and the cost plates to which the items on the cost reports were transcribed, were forwarded by the Statistical Bureaus to the Commission's Bureau of Research and Statistics in Washington, where they were subjected to a check for mathematical accuracy. The Bureau of Research and Statistics, furthermore, made a check of all costs included in the determination of the weighted average of the respective cost items for each of the districts. This check will hereinafter be referred to as a test audit to distinguish it from the checking and editing carried on at the various Statistical Bureaus. In the course of this audit, the Bureau of Research and Statistics examined all of the individual cost reports and compared them with the tabulations on the cost plates. As a part of this audit, the Bureau examined the individual cost reports for an indication of new mines that may have reported costs for 1936, or 1937, on a development basis. In the few instances where reports for such mines were found they were excluded from the cost computations. This exclusion was proper since development expenses are chargeable to capital account and are not properly chargeable to the cost of production within the meaning of the Act. Summaries of the changes and corrections made as a result of this audit were read into the record in connection with the submission of the Bureau of Research and Statistics' cost computations for the various districts. Such changes are reflected in the total costs determination as ultimately determined.

In addition to this test audit, the individual producers' reports and the cost tabulation plates were made available to the office of the Consumers' Counsel for their inspection and analysis. A representative of the Consumers' Counsel stated that the office of the Consumers' Counsel had attempted to satisfy itself on behalf of the consumers that the weighted average costs as computed by the Statistical Bureaus of the Commission for each district were statistically accurate and fairly represented proper average costs. The mechanical posting of cost items from the original cost reports to the tabulation plates and the compilation of totals and averages for each district were checked. The Consumers' Counsel's office found that the posting and mathematical work of the Statistical Bureaus was generally accurate. Such errors in posting or computations as were found were comparatively few and of no consequence in their effect on the district totals. The individual cost returns were also examined for the districts involved in this proceeding and a number of mine reports were noted as showing one or more of the individual

items considerably higher than the general level of costs for those items as reported by other mines in the district. The Consumers' Counsel furnished the Bureau of Research and Statistics a list of such reporting companies and a list of the out-of-line items.

Upon receipt of these suggestions from the Consumers' Counsel, the Bureau of Research and Statistics communicated with the individual producers concerned, requesting verified explanations of the seemingly high items. The producers were cooperative in replying to these inquiries. As a result of the information obtained by these inquiries, the Bureau of Research and Statistics, in some instances, recommended certain revisions in the cost computations which will be hereinafter referred to.

The test audit and the investigation of the out-of-line items were generally made by the Bureau of Research and Statistics subsequent to the submission of the composite cost reports to the District Boards.

As previously stated, Section 4 II (a) of the Act directs the District Boards to make their 1936 determinations from cost data submitted by the statistical bureaus of the Commission and requires them to adjust the weighted average of the total 1936 costs as may be necessary to give effect to any changes in wage rates, hours of employment, or other factors substantially affecting costs, exclusive of seasonal changes, so as to reflect as accurately as possible any change or changes which may have become effective since January 1, 1936.

Computations of the weighted average costs for the nine-months period, April 1-December 31, 1937, were submitted to the District Boards for the purpose of assisting them in making their adjustments of the 1936 costs. The cost computations for 1937 did not include the first three months of that year. The experience represented by those three months was essentially like that of 1936 on the wage scale then in effect. To have tabulated and analyzed the first three months' record of 1937 would have added very little to what was already known from the experience of the entire year 1936. The last nine months of the year 1937, however, represented an experience under a new and higher wage scale, which became generally effective by agreement on April 1, 1937.

It was the opinion of expert witnesses for the Commission that the adjustments of costs could not intelligently be undertaken without constant reference to actual experience at the new level of costs.

The difficulty involved in adjusting costs on a purely theoretical basis by giving full effect to any change in wage rates or in other factors without the use of figures taken from actual experience is illustrated by Exhibit No. 7. This exhibit compares the adjustments of 1936 costs made in October, 1937, from estimates, when little cost infor-

mation was available as to the 1937 costs, with the actual costs as shown for the nine-months period—April to December 1937—on the basis of information received as a result of actual experience. This exhibit, relating to Price Areas Nos. 1 and 2, was introduced for the purpose of illustration. These Price Areas represent approximately 88 per cent of the total national production of bituminous coal. As this exhibit shows, the expert judgment of the district boards of Price Areas Nos. 1 and 2, in October, 1937, as to the amount that should be added to the base costs for 1936 to reflect adjustments required by the Act, when compared with the record of actual experience for the nine-months period from April to December, 1937, proved to be as much as 5¢ above the actual costs.

This exhibit shows how difficult it is to determine the effect of changes in cost factors by any process of theoretical adjustment on a past basis, no matter how accurate that past base may be. This difficulty is due to the fact that although the increase in wage rates is known, labor costs may not increase proportionately for the reason that the steady progress of the art often makes it possible to produce an equal tonnage with fewer men, and the number of man-hours required to a ton gradually decreases. The introduction of mechanical loading underground, and other changes in mine practices, and the growth of strip mining, all operate to reduce the labor cost per ton. Accordingly, an increase in costs will not usually be equal to the exact increase in wage rates.

While labor costs may be reduced by the process of mechanization, supply costs are often increased through the installation of additional equipment, involving increased maintenance charges, cost of supplies, etcetera.

Costs in some districts were affected by the relative increase in strip mining as contrasted with deep mining underground. Costs likewise may be affected in a given district by abandonment of an old mine or a group of old mines and by the opening of new ones. Finally, costs are affected by the volume of current production.

For these reasons, any adjustment developed by a method of estimates applied to items of past base costs should be carefully checked against actual experience of current costs as reported from the records of producing companies.

The Act provides that adjustments in the 1936 weighted average costs should be made to reflect changes which may have been established since January 1, 1936, exclusive of seasonal changes.

While official cost data for the months of January, February, and March, 1938, were not available, the production in each district for those months was known with reasonable accuracy. This monthly production was compared with

the experience of 1937, selecting for the purpose of comparison a month of corresponding tonnage in 1937, and as a result a fairly close approximation of costs for the months of 1938 was obtained. An expert witness for the Commission testified that, as a result of this comparison, he was satisfied that, for most of the districts of the country, the adding in of cost records for January, February, and March, 1938, would make comparatively little difference in the actual average cost for April to December 1937.

The costs for the nine-months period, April to December 1937, were submitted to the district boards for their information in testing their adjustments by the use of actual experience. In so doing, the boards were furnished not only with the nine-months weighted average, but also with the record for each separate month, so as to permit reviewing the costs in the light of the seasonal factor.

The nine-months record was further carefully tested by the Bureau of Research and Statistics to ascertain how far it might be considered representative of the twelve-months span of the coal year, including January, February, and March, 1938. The first test applied was the trend of tonnage produced (Exhibits 12, 16, 17, 153, 154).

Tonnage is one of the factors influencing the cost of production. A decline in tonnage tends to raise costs and an increase in tonnage tends to lower costs, other factors being equal. Analysis of Exhibit 12 (revised in Exhibit 154) shows that for the industry as a whole the average monthly production in the first quarter of 1938 was 17.2 percent below that in the last nine months of 1937. This is partly because the business recession had so reduced the consumption of coal in the first quarter of 1938 as to offset the usual influence of cold weather. As a result, the winter quarter of January to March, instead of being a period of unusually high production in 1938 and, therefore, a period of lower costs, was, in fact, somewhat lower in point of production than the average for the nine months of 1937. For this reason the adding in of the costs for January, February and March 1938 would tend, over the industry as a whole, to slightly raise the nine-months average rather than lower it, so far as the factor of tonnage is concerned. To further test the representativeness of the nine-months costs, an expert witness for the Bureau of Research and Statistics introduced Exhibit 13 (revised in Exhibit 155). This exhibit was a careful study of the probable costs of production in January to March 1938, as estimated from the known trend of production and of the probable relation between the three-months costs when added in to make twelve months, and the actual costs for the nine-months period of 1937. As a result of this comparison, the Commission's expert testified that in most

districts the adding in of cost records for January to March 1938, would make comparatively little difference in the actual average costs for April to December 1937, and that for the industry as a whole the result would be, if anything, a slight increase in cost, amounting to approximately 1.2 cents a ton.

The expert further testified that for some districts the nine-months average alone would not be representative and that the record of each district should be studied in the light of its market characteristics and local production experience in these months. Each of the districts in Price Areas 3, 4, and 5 has been subjected to such critical analysis to determine what part of the nine-months record of actual costs may be taken as representative.

In District 13, the analysis showed that the months of April, May, and June might well be eliminated as abnormal because of distortion by a suspension of mining and its after effects. The remaining six months, July-December, are reasonably representative of a year's experience on the present wage scale, although undoubtedly conservative.

In District 15, also, it was shown that the months of April and May were abnormal by reason of a brief suspension of mining, but that the remaining seven-months period was fairly representative of costs for the coal year 1937-38. From June to December, the district's average production rate was almost identical with that for January-March 1938, indicating no material change as far as the factor of tonnage is concerned.

In District 14, on the other hand, the analysis indicated that the nine-months costs were not representative. In said district the nine-months costs were found to contain idle-month expenses in the amount of 24 cents a ton, reflecting the extreme degree of summer idleness characteristics of this district. Although such idle-time expense is a legitimate part of the cost, some correction of the nine-months average in this district was clearly necessary to reflect changes in cost upon an annual basis, and such a correction was worked out in conference with the district board.

By means of this critical analysis, it has been possible to show actual costs of production on the present wage scale for a representative period, exclusive of seasonal change, and to check all adjustments proposed on a basis of theoretical projection by district boards against the test of actual performance. Witnesses for the several district boards agreed to the representative character of the actual costs in the time periods above stated.

Preliminary tabulations of the available 1937 individual cost returns in the form of composite reports were sent to the respective district boards involved in this proceeding on April 20, 1938. These tabulations were introduced into evidence. The letter of transmittal to the several district boards accompanying

these tabulations explained that they were subject to change by reason of additional reports received and upon a completed review.

Thereafter, a further check of the accuracy of the 1937 data was made, and all late returns received were added. After this completed review was finished, the results were transmitted to the respective district boards involved in this proceeding by letter dated May 30, 1938. These composite reports of the weighted average of the total costs for the nine-months period, April 1-December 31, 1937, were introduced into evidence.

Through a Commission witness there was introduced in evidence a series of uniform exhibits for each district reflecting adjustments to the 1937 costs resulting from two statutory factors operative since January 1, 1938; one, the increase in the Federal Unemployment Tax from two per cent to three per cent, and the other an adjustment to reflect the full incidence of the tax levied under Section 3 of the Bituminous Coal Act.

The composite reports submitted to the district boards included the item of selling costs broken down into the eleven sub-items previously referred to. The selling costs were computed in these reports upon the tonnage of coal sold commercially and not on all the tonnage produced. The divisor in each instance was Item 4, appearing on the cost form and the composite report "Total tons all other sales," which included only the coal sold commercially. The dollar amounts represented the corresponding sum expended in the selling of this tonnage.

The weighted average of the total cost of production, administration and selling, computed by the Bureau of Research and Statistics on the composite reports for each district was obtained by adding to the per ton cost of production and administration (computed by using as a divisor the total ascertainable tonnage produced) the per ton cost of selling (computed on the basis of the commercial sales only). Though this treatment found the weighted average of the costs of selling coal commercially, it did not find the weighted average contemplated by Section 4 II (a) of the Act, because, first, it failed to include the actual costs, if any, of selling coal sold otherwise than commercially, and, second, it included in the divisor only the coal sold commercially instead of all the ascertainable tonnage produced in the district, thereby excluding from the divisor "exempt coal," "mine fuel," and "controlled" sales, as designated on the cost form and in the composite reports.

In order to ascertain the weighted average of the selling costs, there must be added to the actual costs of selling coal commercially the actual cost if any, of selling coal otherwise sold, and the sum of such cost must be divided by the total tons of the ascertainable tonnage produced in a district. The only items of selling costs reported on sales other than commercial sales were sales taxes and

Coal Act taxes, which are hereinafter reallocated from the selling cost schedule to the producing and administrative cost schedule.

The district boards in this proceeding introduced evidence, hereinafter referred to, establishing that the actual costs of selling, as reported in the composite reports, should be taken as the reasonable costs of selling coal sold commercially for their respective districts. The costs of selling coal were shown to depend on a variety of factors, including the quality and size of coal; the territory where it is consumed, whether densely or sparsely populated; the method of transportation; the radius of distribution and presence or absence of a home market; the volume involved in the transaction; the intensity of competition from other producers; command of a varied supply of coals adapted to several uses; and existence of advantageous long-term contracts. Selling costs are also influenced by distance from market; the business policy of the producer, whether content to maintain his market or seeking to expand it; reciprocity in freight traffic; and the possession of auxiliary facilities of distribution, such as wharves, vessels, docks and retail yards, whether owned directly by the producer or by an affiliate. The bituminous coal industry is highly competitive and competition is reflected in the methods and costs of selling.

Depending upon such factors, the actual direct costs, exclusive of overhead, of selling coal in individual transactions vary widely. The average selling costs for any district depend greatly on the relative proportions of the various types of transactions involved.

The record shows that coal may be sold through a selling agent financially affiliated with the producer. The evidence further indicates that the affiliated selling company often handles coal for the accounts of other producers, that the commissions charged are commonly the same for affiliated and non-affiliated business, and that they are comparable to the commissions of independent distributors. Evidence was likewise present that the reported costs of selling tabulated in the composite reports for each district frequently understated the full cost involved in the merchandising of coal for the district through inability of producers to state the discounts allowed to wholesalers. Many sales to wholesalers are made at a net price, the producer having no record of the amount of the wholesaler's margin and therefore no means of accurately reporting the discount allowed.

In view of the complexity of the problem, and of the varying circumstances under which coals are marketed in any one district, the judgment of the marketing experts that the actual costs of selling coal commercially, as reported, are the best indication of the reasonable

costs of selling such coal is entitled to great weight.

In the determination of such actual costs of selling, any item not properly chargeable to cost should, however, be disallowed, and as will later appear, disallowances in the selling costs have been made in some districts.

In connection with the determination of reasonable selling costs, proper treatment must be accorded the 1¢ per ton tax levied under the Bituminous Coal Act, and sales taxes. The individual cost forms (Exhibits Nos. 2 and 6) included part of the Coal Act tax in the schedule of producing and administration expenses, and part in the schedule of selling costs. The series of uniform exhibits for each district reallocated the Coal Act tax entirely to producing and administrative expenses. The operation of reallocating the Coal Act tax from selling cost to producing and administrative cost is shown in detail in Tables 3 and 4 appended to each district. The method used automatically takes care of Coal Act tax paid on controlled sales, properly charging it to the producing and administrative cost. This adjustment by the Bureau of Research and Statistics of the Commission is proper, since the Coal Act tax is imposed both upon the sale and other disposal of coal. Similar adjustment should be made in the treatment of the sales taxes, including sales taxes on controlled sales. Tables 7 and 8 appended to each district give the computations necessary for effecting such transfer of the sales taxes from the selling cost schedule to the producing and administrative schedule.

The composite reports submitted to the district boards also included a charge for the item "mine fuel." A table showing the weighted average value used for pricing mine fuel, as reported by producers to the Commission, appears at the end of the Appendix.

MINIMUM PRICE AREA 3—DISTRICT NO. 13

Composite tabulations of cost data showing the weighted average of the total costs of the ascertainable tonnage produced in District 13 in the calendar year 1936, were submitted to the District Board for said district by the proper Statistical Bureau of the Commission.

Composite tabulations embodying such cost data were introduced in evidence as Exhibits 232-235, inclusive, and were in all respects identical with the tabulations submitted to the District Board, with the exception of Exhibit 235, which said exhibit, compiled and prepared by the Bureau of Research and Statistics of the Commission, contained a retabulation of the costs of small mines of less than fifty tons daily capacity. As a result of such retabulation of the costs of small mines of less than fifty tons daily capacity, the total costs of the ascertainable tonnage produced in said district was

increased one mill. Including this one mill increase in the computation of the total costs for said district, said exhibits show a total producing and administrative cost of \$2.1186 per ton and a selling cost on coal sold commercially of \$0.0744 per ton, the sum of the two being designated as total producing, administrative and selling cost and amounting to \$2.1930 per ton.

The Bureau of Research and Statistics of the Commission, subsequent to the aforesaid tabulations, subjected the verified cost reports of the individual producers in District 13 to a test audit and checked same as to out-of-line items questioned by the Office of Consumers' Counsel. As a result of said audit and check of out-of-line items questioned by the Office of Consumers' Counsel, the Bureau of Research and Statistics of the Commission recommended certain revisions and deletions totalling \$0.0085 per ton for the district. Details of such revisions and deletions appear in full in Table I in the Appendix for District 13.

The District Board for District 13 is composed of members thoroughly experienced in the coal industry in said district. The managing executives of said board are coal producers themselves, thoroughly familiar not only with the costs of producing coal through their own companies but also with the costs of producing coal in District 13 as a whole. The membership of said board is truly representative of all the mines in said district, approximately 70% of the commercial tonnage being produced by companies with which the District Board members are associated. The cost data submitted to the District Board by the Statistical Bureau of the Commission were carefully considered by said board in the light of the combined experience of its individual members and, after due consideration of same, the District Board for District 13 adopted the computations of the Statistical Bureau as its determination of the weighted average of the total costs of the ascertainable tonnage produced in District 13 in the calendar year 1936, except, as appears from Exhibits 247 and 248 introduced in evidence by said board. The District Board determined the item of "Total selling cost" for commercial and captive mines over 50 tons daily capacity to be \$0.0421 and for commercial and captive mines under 50 tons daily capacity to be \$0.0195, instead of \$0.0757 and \$0.0235, respectively, as computed by the Bureau of Research and Statistics of the Commission. The difference in such computations is due to the fact that the District Board divided the total dollar costs by the total tons produced, including exempt and captive tonnage, instead of dividing same by the total tons sold commercially, as did the Bureau.

The computations of the District Board and of the Statistical Bureau being in substantial agreement, except as above set forth, and the District Board having determined to adopt the revi-

sions and disallowances proposed by the Bureau of Research and Statistics as a result of its test audit and check of out-of-line items questioned by the Office of Consumers' Counsel, the Commission finds that the tabulations of the total costs of producing coal in District 13, as submitted to the District Board by the Statistical Bureau, are proper in all respects and truly reflect the weighted average of the total costs of producing coal in said district during the calendar year 1936, with the exception of the item relating to costs of selling. The weighted average of the costs of selling is to be computed and determined by using as a divisor the total ascertainable tonnage produced in a district. Adjusting the

computations set forth in Table I in the Appendix for District 13, which contain all the revisions and disallowances resulting from the record as recommended by the Bureau of Research and Statistics of the Commission and as adopted by the District Board, by including in the divisor to be used in weighting the costs of selling not only coal sold commercially but also all other tonnage produced in the district, the Commission finds the weighted average of the total costs of the ascertainable tonnage produced in District 13 in the calendar year 1936 and the weighted average of the total costs of the tonnage produced by commercial mines in the district in the calendar year 1936, to be as follows:

Weighted Average of the Total Costs per Ton in the Calendar Year 1936

[Incorporating all revisions and disallowances resulting from the record]

[Sales taxes are here charged to producing and administrative cost rather than to selling cost]

TOTAL COMMERCIAL MINES OVER AND UNDER 50 TONS DAILY CAPACITY

	Tons (1)	Adjusted cost per ton (2)	Amount (3)	Weighted average of total tons produced (4) (3÷1)
Producing and administrative cost:				
Tons produced, 1936.....	6,279,735	\$2.2136	\$13,900,518	\$2.2136
Reasonable selling cost:				
Tons sold commercially.....	6,092,863	.0832	506,858	XX
All other coal.....	186,872	0	0	XX
Total.....	6,279,735		506,858	.0807
Total producing, administrative, and selling cost as determined by the Commission.....			14,407,376	2.2943

TOTAL ASCERTAINABLE TONNAGE, INCLUDING CAPTIVE MINES

Producing and administrative cost:				
Tons produced, 1936.....	12,513,538	\$2.1106	\$26,410,706	\$2.1106
Reasonable selling cost:				
Tons sold commercially.....	7,025,910	.0739	519,451	XX
All other coal.....	5,487,628	0	0	XX
Total.....	12,513,538		519,451	.0415
Total producing, administrative, and selling cost as determined by the Commission.....			26,930,157	2.1521

In order to assist the District Board for District 13 in its determination of the adjusted costs, the Statistical Bureau of the Commission computed the actual costs of the nine months' period, April-December 1937, the latest period for which cost data were available at the increased wage rates effective in 1937, and submitted such computations to the District Board. These computations were also subjected to a test audit by the Bureau of Research and Statistics and were checked for any extension into 1937 of out-of-line items questioned by the Office of Consumers' Counsel. As a result of such audit and check, the Bureau of Research and Statistics of the Commission recommended certain revisions and disallowances. Details of the 1937 revisions and disallowances appear in Table 2 in the Appendix for District 13.

The record of actual costs incurred in a representative period subsequent to the adoption of a wage scale in the bituminous coal industry is the best criterion to

follow in determining adjusted costs. While a new wage scale became generally effective in other fields on April 1, 1937, yet in District 13 most coal mines remained inactive for six or seven weeks, which had a distorting effect on the district costs during April and May of said year. Accordingly, the Bureau of Research and Statistics of the Commission recommended that the two months of April and May 1937 be eliminated from consideration in determining the adjusted costs and, in accordance with said recommendation, the 1937 costs were recomputed by the Bureau. In said recomputation, the months of April and May 1937 were eliminated, which resulted in a reduction of the District's average cost of approximately six cents, that is, from \$2.5304 per ton to \$2.4691 per ton.

While there is some evidence to the effect that the seven months' period from June to December 1937, inclusive, is reasonably representative of the twelve months' period, April 1, 1937-March 31, 1938, in said district, yet the overwhelm-

ing weight of the uncontradicted evidence is to the effect that no official records of actual costs for the months of January, February and March 1938 were available to be used in adjusting the 1936 costs; that the production in District 13 declined during the first quarter of 1938, which tended to increase the costs somewhat above the 1937 level aside from the inactive period; that the wage conference which ended in other districts on April 1, 1937, continued in the State of Alabama until May 1937, and that many of the mines in said state did not resume operations until the latter part of May or in the early part of June, with the result that considerable non-recurring expense resulting from such inactivity was included in the June figures, rendering such figures abnormal.

In view of the above circumstances, the Bureau of Research and Statistics computed the actual six months' costs for July-December 1937, adjusted to reflect two factors not fully reflected in the 1937 costs, that is, the Federal Unemployment Tax after January 1, 1938, and the full incidence of the tax under the Bituminous Coal Act, and to give effect to all revisions and disallowances resulting from the record, the details of such computations appearing in Tables 3 and 6 in the Appendix for District 13. The result of such computations is as follows:

Bureau of Research and Statistics' Computation of the Actual Costs of July-December 1937 in District No. 13, Adjusted for Federal Unemployment Tax and Bituminous Coal Act Tax

[Incorporating all revisions and disallowances resulting from the record. See Appendix Table 6 for District No. 13. The months of April, May, and June are omitted because the costs were found by the record to be abnormal by reason of a suspension of mining]

	Total commercial mines over and under 50 tons daily capacity	Total ascertainable tonnage includ- ing captive mines
1. Producing and administrative cost.....	\$2.4205	\$2.3924
2. Selling costs per ton on coal sold commercially.....	.0894	.0816

¹ The tax payable under the Bituminous Coal Act is here charged to producing and administrative expense rather than to selling cost.

Details of such adjustments appear in Tables 3, 4 and 6 in the Appendix for District 13. Such adjustments as may be necessary to provide for the inclusion of tonnage other than coal sold commercially in the weighting of the cost of selling appear herein in subsequent findings.

The District Board for District 13 accepted as accurate the Bureau's tabulation of the 1936 costs and made the required adjustments. Such adjustments were submitted to the Commission by the District Board and were introduced in evidence as Exhibit 248.

In response to an order of the Commission issued October 31, 1937, the Dis-

district Board for District 13, after careful deliberation as to the best means of then determining the amount of adjustment necessary to take care of the various factors affecting costs since January 1, 1936, determined that such information could be best obtained by securing statements from representative code member producers of the district. Accordingly, such information was secured by the District Board from fifteen selected mines which were truly representative of the different seam groupings in District 13. From such data the District Board determined that an adjustment of \$0.2480 as to mines over 50 tons daily capacity should be made in the 1936 costs.

In following the requirements of Order No. 240 of the Commission, the District Board again considered the cost data submitted by the Statistical Bureau of the Commission for the year 1936, and concluded that for rail mines the former determinations of the District Board, supplemented by an adjustment to take care of the Unemployment Tax increase as of January 1, 1938, would give the most representative adjustment; and, having no figures for guidance as to proper adjustments for truck mine costs, the District Board determined that, since said mines were not seriously affected by the suspension of April 1, 1937, the figures submitted by the Commission for truck mine costs covering the period of April through December 1937, should be used as a basis for the adjustment of such costs.

While the District Board for District 13 considered the figures presented to it by the Statistical Bureau of the Commission for the last nine months of 1937, yet, inasmuch as many of the commercial mines did not resume operations after the wage conference until the latter part of May or the first part of June with the attending result that considerable non-recurring expense was included in the June cost figures, the District Board determined that the last six months would be a more representative period than the last seven months of 1937.

In determining the adjusted costs, the District Board used the cost data obtained by it from the fifteen representative mines of code members and, in computing selling costs, used the same method it adopted in computing the 1936 selling costs. The District Board's figure of selling cost was \$0.0495 (Exhibit 247, page 4), as compared with the Bureau's figure of \$0.0919 (Exhibit 244) for the last nine months of 1937—both figures including the Bituminous Coal Act tax.

The District Board's determination of the adjusted costs of the total ascertainable tonnage in District 13, including adjustments for the Federal Unemployment tax, the full incidence of the Bituminous Coal Act tax and revisions and disallowances resulting from the record is as follows:

District Board's Determination of the Adjusted Costs of the Total Ascertainable Tonnage in District No. 13

[Incorporating all revisions and disallowances resulting from the record. See Appendix Table 5 for District No. 13]

		Total ascertainable tonnage including captive mines and mines under 50 tons daily capacity
1. Producing and administrative cost ¹		\$2.3768
2. Average selling costs per ton on all coal produced, including captive ¹		.0412

¹The tax payable under the Bituminous Coal Act is here charged to producing and administrative expense rather than to selling costs. Note, however, that in computing the selling cost the Board divided the expenditures on selling by the total tonnage produced including the large tonnage of captive and exempt coal which incurred no selling expense.

Details of the above adjustments will be found in Table 5 in the Appendix for District 13.

In view of the above and foregoing facts found to exist regarding the June 1937 cost data, the Commission is of the opinion and so finds that the last six months of 1937 is a more representative period of the full twelve months' period than the last seven months of 1937, and that the last six months of 1937 was properly used to ascertain the proper adjustments to be made in the 1936 costs.

The computations of the Bureau of Research and Statistics of the actual

costs for July-December 1937, adjusted to give effect to the Federal Unemployment tax and the Bituminous Coal Act tax and incorporating all revisions and disallowances resulting from the record, show a weighted average total producing, administrative and selling cost of \$2.4740, as compared with the District Board's determination of the adjusted 1936 costs, as modified in the above table, of \$2.4180, a difference of \$0.0560 per ton. This disparity is accounted for by the fact that the District Board made its adjustments of the 1936 costs from data obtained from only fifteen representative mines, and, in addition, used the total production as the divisor for selling costs, whereas the computations of the Bureau of Research and Statistics are based on a much more complete coverage of the tonnage produced in the district and the selling cost is determined by the use of only the amount of coal sold as a divisor.

The weight of the evidence is to the effect that the actual costs of selling coal in District 13 represent the reasonable costs of selling and the Commission is of opinion and so finds that the actual records of costs incurred in the commercial sale of coal constitute the best evidence available of reasonable selling costs in said district and determines the reasonable costs of selling coal commercially in District 13 to be \$0.0816 per ton.

The adjusted costs of the ascertainable tonnage produced in District 13 as computed by the Bureau of Research and Statistics are:

Bureau of Research and Statistics' Determination of the Adjusted Costs of All Ascertainable Tonnage in District No. 13

[Revised to incorporate all changes and disallowances resulting from the record (see Appendix Table 6) and further adjusted to reflect the inclusion in the divisor for selling costs of the total tonnage produced in the district]

	Tons (1)	Adjusted cost per ton (2)	Amount (3)	Weighted average of total tons produced (4) (3÷1)
Producing and administrative cost:				
Tons produced, 1936.....	12,513,538	\$2.3924	\$29,937,388	\$2.3924
Reasonable selling cost:				
Tons sold commercially.....	7,025,910	.0816	573,314	XX
All other coal.....	5,487,628	0	0	XX
Total.....	12,513,538		573,314	.0458
Total producing, administrative, and selling cost as determined by the Commission.....			30,510,702	2.4382

The Commission, after due consideration of all the facts found to exist, accepts the foregoing computations of the Bureau of Research and Statistics as accurate and finds that the weighted average of the total costs of the ascertainable tonnage produced in District 13 in the calendar year 1936, as adjusted, is \$2.4382 per net ton.

Three Counties of District 13 in Minimum Price Area 1

Cost reports were received from one small truck mine operator located in Van Buren County, Tennessee, with an an-

nual production of 1,455 tons in 1936, and 1,953 tons in the last nine months of 1937. Van Buren County is one of three counties of Tennessee which, although belonging to District 13, are technically a part of Minimum Price Area 1. The balance of District 13, embracing the great Alabama coal field, the southeastern portion of Tennessee, and the state of Georgia, constitutes Minimum Price Area 3. The production of these three counties is insignificant and the small mine referred to was the only one reporting costs in either 1936 or 1937.

In view of the fact that there was only this one small report from these three counties, a problem in statistical classification was presented. The mine does not belong in any of the other districts of Minimum Price Area 1 and, if its reports were to be set up as a separate table, disclosure of individual business would be inevitable. Moreover, in the opinion of the witness, to dignify this production of 1,455 tons with a separate series of statistical tables would be a waste of public funds and would border on the ridiculous.

A consideration of the comparative tonnage involved will make it apparent that this classification can have no appreciable effect on the weighted average costs. A transfer of this 1,455 tons from Minimum Price Area 1 to Minimum Price Area 3 would not measurably influence the results.

The Commission is of the opinion and so finds that the Bureau's treatment of the costs of this small mine is justified by the facts, insofar as determination of the weighted average costs of either price area is concerned.

DISTRICT NO. 13—APPENDIX

Table 1.—Producing and administrative costs and selling costs in District No. 13 for the year 1936 as reported by the Bureau of Research and Statistics of the Commission incorporating all revisions and disallowances resulting from the record in the public hearing in Docket No. 15.

Table 2.—Producing and administrative costs and selling costs in District No. 13 for the nine months' period, April–December, 1937 as reported by the Bureau of Research and Statistics of the Commission incorporating all revisions and disallowances resulting from the record in the public hearing in Docket No. 15, April–December, 1937.

Table 2a.—Producing and administrative and selling costs in District No. 13 for the seven months' period, June–December, 1937 as reported by the Bureau of Research and Statistics of the Commission incorporating all revisions and disallowances resulting from the record in the public hearing in Docket No. 15, June–December, 1937.

Table 2b.—Producing and administrative costs and selling costs in District No. 13 for the six months' period, July–December, 1937 as reported by the Bureau of Research and Statistics of the Commission incorporating all revisions and disallowances resulting from the record in the public hearing in Docket No. 15, July–December, 1937.

Table 3.—Adjustments for Federal Unemployment and Bituminous Coal Act Taxes applied to the revised costs incorporating therein all revisions and disallowances resulting from the public hearing in Docket 15. (Commercial and captive, 7 months, June–December, 1937.)

Table 3a.—Adjustments for Federal Unemployment and Bituminous Coal Act

Taxes applied to the revised costs incorporating therein all revisions and disallowances resulting from the public hearing in Docket No. 15. (Commercial and captive, 6 months, July–December, 1937.)

Table 4.—Adjustments for Federal Unemployment and Bituminous Coal Act Taxes applied to the revised costs incorporating therein all revisions and disallowances resulting from the public hearing in Docket No. 15. (Commercial (excluding captive) 7 months, June–Dec., 1937.)

Table 4a.—Adjustments for Federal Unemployment and Bituminous Coal Act Taxes applied to the revised costs incorporating therein all revisions and disallowances resulting from the public hearing in Docket No. 15. (Commercial (excluding captive) 6 months, July–Dec., 1937.)

Table 5.—District Board's determination of the adjusted costs of the mines over 50 tons daily capacity and of the total ascertainable tonnage in District No. 13 revised to incorporate all changes and disallowances resulting from the record in the public hearing in Docket No. 15.

Table 6.—Bureau of Research and Statistics' computation of the actual costs of July–December, 1937, in District No. 13, adjusted for all factors operative since January 1, 1938, for which proof was supplied in the record.

Table 7.—Transfer of Sales Taxes from Selling Schedule to Producing and Administrative Schedule, Year 1936.

Table 8.—Transfer of Sales Taxes from Selling Schedule to Producing and Administrative Schedule, July–December, 1937.

TABLE 1.—Producing and Administrative Costs and Selling Costs in District No. 13 for the Year 1936 as Reported by the Bureau of Research and Statistics of the Commission Incorporating All Revisions and Disallowances Resulting From the Record in the Public Hearing in Docket No. 15

Classification	Record page No.	Mine code No.	Cost form item No.	Producing and administrative costs			Selling costs on coal sold commercially			Total cost, producing, administrative and selling
				Tons	Amount	Per ton	Tons	Amount	Per ton	
Total commercial and captive, over 50 tons:										
Original totals—C. D. 13-1—exhibit 232	225			12,368,678	\$26,225,238	\$2.1203	6,885,788	\$521,270	\$0.0757	\$2.1960
Net change from test audit of June 3	226				1—34,008			(1)		
Items queried by consumers counsel and disallowed (All such items related to commercial mines)	231	3-113	7 a		—335					
	232	1-26	7 a		—658					
			7 b		—1,500					
		3-18	13 k					—2,040		
Development disallowance	230	4-28-1	5	—30,240						
			12		—116,840					
			19		—10,838					
			4				—29,868			
Net revisions			14	—30,240	—164,209		—29,868	—3,761	—5,801	
Revised total				12,338,438	26,061,029	2.1122	6,855,920	515,469	.0752	2.1874
Mines under 50 tons:										
Original totals—C. D. 13-2—exhibit 235	226			175,100	349,662	1.9969	169,990	3,997	.0235	2.0204
Net change from test audit of June 3										
Items queried by consumers counsel and disallowed										
Net revisions										
Revised total				175,100	349,662	1.9969	169,990	3,997	.0235	2.0204
Total ascertainable tonnage:										
Original totals—C. D. 13-3—exhibit 235	226			12,543,778	26,574,900	2.1186	7,055,778	525,267	.0744	2.1930
Net revisions				—30,240	—164,209		—29,868	—5,801		
Revised total				12,513,538	26,410,691	2.1106	7,025,910	519,466	.0739	2.1845
Commercial—over 50 tons:										
Original totals—C. D. 13-1a—exhibit 233	226			6,134,875	13,681,057	2.2300	5,952,741	908,662	.0855	2.3155
Net change from test audit of June 3	226				(1)		(1)			
Items queried by consumers counsel and disallowed					—2,493			—2,040		
Development disallowance	230	4-28-1		—30,240	—127,708		—29,868	—3,761		
Net revisions				—30,240	—130,201		—29,868	—5,801		
Revised total				6,104,635	13,550,856	2.2198	5,922,873	902,861	.0849	2.3047
Total commercial—over and under 50 tons:										
Original totals—C. D. 13-1a+13-2—exhibits 233 and 235				6,309,975	14,030,719	2.2236	6,122,731	512,659	.0837	2.3073
Net revisions				—30,240	—130,201		—29,868	—5,801		
Revised total				6,279,735	13,900,518	2.2136	6,092,863	506,858	.0832	2.2968

NOTE.—See footnotes at end of table.

TABLE 2.—Producing and Administrative Costs and Selling Costs in District No. 13 for the 9 Months' Period, April-December 1937 as Reported by the Bureau of Research and Statistics of the Commission Incorporating All Revisions and Disallowances Resulting From the Record in the Public Hearing in Docket No. 15—Continued

Classification	Rec-ord page No.	Mine code No.	Cost form item No.	Producing and administrative costs		Selling costs on coal sold commercially		Total cost, producing, administrative and selling
				Tons	Per ton	Tons	Per ton	
Mines under 50 tons:								
Original totals—C. D. 13-2-Exhibit 244	234			174,930	\$354,693	168,464	\$3,374	\$2,0475
Net change from test audit of June 3								
Items queried by consumers counsel and disallowed								
Net revisions								
Revised total				174,930	354,693	168,464	3,374	2,0475
Total ascertainable tonnage:								
Original totals—C. D. 13-3-Exhibit 244	234			9,064,071	22,102,696	4,753,801	437,104	2,5304
Net revisions				-14,427	-90,037	-14,295	-4,728	
Revised total				9,049,644	22,012,572	4,739,506	432,376	2,5238
Commercial—Over 50 tons:								
Original totals—C. D. 13-1a-Exhibit 242	234			4,193,099	10,433,086	2,4870,4,100,220	426,526	2,5910
Net change from test audit of June 3								
Items queried by consumers counsel and disallowed								
Development disallowance								
Net revisions								
Revised total				4,180,609	10,350,959	2,4759,4,083,925	421,798	2,5791
Total commercial—Over and under 50 tons:								
Original totals—C. D. 13-1a + 13-2-Exhibits 242 and 244								
Net revisions								
Revised total								
Captive mines—Over 50 tons:								
Original totals, C. D. 13-1b-Exhibit 243	234			4,094,105	11,314,851	2,4104,485,117	7,204	2,4253
Net change from test audit of June 3								
Items queried by consumers counsel and disallowed								
Net revisions								
Revised total				4,094,105	11,314,851	2,4104,485,117	7,204	2,4253

Same as for "Total commercial and captive, over 50 tons."

TABLE 1.—Producing and Administrative Costs and Selling Costs in District No. 13 for the Year 1936 as Reported by the Bureau of Research and Statistics of the Commission Incorporating All Revisions and Disallowances Resulting From the Record in the Public Hearing in Docket No. 15—Continued

Classification	Rec-ord page No.	Mine code No.	Cost form item No.	Producing and administrative costs		Selling costs on coal sold commercially		Total cost, producing, administrative and selling
				Tons	Per ton	Tons	Per ton	
Captive mines—over 50 tons:								
Original totals—C. D. 13-1b-Exhibit 234	226			6,233,803	\$12,544,181	\$2,0123,933,047	\$12,608	\$2,0258
Net change from test audit of June 3								
Items queried by consumers counsel and disallowed								
Net revisions								
Revised total				6,233,803	12,510,173	2,0068,933,047	12,608	2,0263
<p>It is recommended in the record by the Bureau of Research and Statistics (Tr. 226-227) that items totaling a net amount of \$96,050.24 should be deducted from the total producing and administrative cost and that items totaling a net amount of \$12,101 should be deducted from the total selling cost. Further investigation, since the hearings, shows that \$2,048 and \$12,101 of these amounts, respectively, had already been deducted and were not included in the totals on C. D. 13-1, exhibit 232. Hence, no further deductions on account of these items are necessary.</p> <p>The Bureau of Research and Statistics recommended the disallowance of the report for mine 4-28-1 because it was considered to have been on a development basis. In order to effect this disallowance it is necessary to deduct \$10,868 of administrative expenses from the total producing and administrative costs in addition to other items mentioned in the record.</p> <p>Same as for total commercial and captive, over 50 tons.</p>								
Total commercial and captive over 50 tons:								
Original totals—C. D. 13-1a + 13-2-Exhibits 241 and 242	234			8,889,141	\$21,747,946	\$2,4466,4,585,337	\$133,739	\$2,5412
Net change from test audit of June 3								
Items queried by consumers counsel and disallowed (all such items related to commercial mines)								
Development disallowance								
Net revisions								
Revised total				8,874,714	21,657,990	2,4404,4,571,042	429,002	2,5343

TABLE 2a.—Producing and Administrative Costs and Selling Costs in District No. 13 for the 7 Months' Period, June-December 1937, as Reported by the Bureau of Research and Statistics of the Commission Incorporating All Revisions and Disallowances Resulting From the Record in the Public Hearing in Docket No. 15

Classification	Rec-ord page No.	Mine code No.	Cost form item No.	Producing and administrative costs			Selling costs on coal sold commercially			Total cost, producing, administrative and selling
				Tons	Amount	Per ton	Tons	Amount	Per ton	
Total commercial and captive, over 50 tons:										
Original totals—C. D.—Exhibit 245	239			7,917,165	\$18,891,762	\$2.3862	4,026,141	\$372,300	\$0.0925	\$2.4787
Net change from test audit of June 3					-8,146			-31		
Items queried by consumers counsel and disallowed (all such items related to commercial mines)		3-18	15 k					-1,400		
Development disallowance				-14,427	-71,462		-14,205	-806		
Net revisions				-14,427	-79,608		-14,205	-3,237		
Revised total				7,902,738	18,812,154	2.3805	4,011,846	369,068	.0920	2.4725
Mines under 50 tons:										
Original totals—C. D.—Exhibit 245	239			155,692	314,875	2.0224	150,224	3,118	.0208	2.0432
Net change from test audit of June 3										
Items queried by consumers counsel and disallowed										
Net revisions										
Revised total				155,692	314,875	2.0224	150,224	3,118	.0208	2.0432
Total ascertainable tonnage:										
Original totals—C. D.—Exhibit 245	239			8,072,857	19,206,637	2.3792	4,176,365	375,623	.0899	2.4691
Net revisions				-14,427	-79,608		-14,205	-3,237		
Revised total				8,058,430	19,127,029	2.3735	4,162,160	372,386	.0894	2.4629
Commercial—Over 50 tons:										
Original totals—C. D.—Exhibit 246	242			3,080,182	8,962,736	2.4327	3,596,854	365,521	.1016	2.5343
Net change from test audit of June 3					-2,404			-31		
Items queried by consumers counsel and disallowed		3-18	15 k					1-1,400		
Development disallowance				-14,427	-71,462		-14,205	-806		
Net revisions				-14,427	-79,608		-14,205	-3,237		
Revised total				3,065,755	8,878,870	2.4221	3,582,559	362,284	.1011	2.5232
Total commercial—Over and under 50 tons:										
Original totals—C. D.—Exhibit 246	242			3,835,874	9,267,611	2.4160	3,747,078	368,639	.0984	2.5144
Net revisions				-14,427	-79,608		-14,205	-3,237		
Revised total				3,821,447	9,188,003	2.4038	3,732,873	365,402	.0979	2.5037
Captive mines—Over 50 tons:										
Original totals—C. D.—Exhibit 246										
Net change from test audit of June 3										
Items queried by consumers counsel and disallowed										
Net revisions										
Revised total										

1 Same as for total commercial and captive, over 50 tons.

2 No exhibit.

TABLE 2b.—Producing and Administrative Costs and Selling Costs in District No. 13 for the 6 Months' Period, July-December 1937, as Reported by the Bureau of Research and Statistics of the Commission Incorporating All Revisions and Disallowances Resulting From the Record in the Public Hearing in Docket No. 15

Classification	Rec-ord page No.	Mine code No.	Cost form item No.	Producing and administrative costs			Selling costs on coal sold commercially			Total cost, producing, administrative and selling
				Tons	Amount	Per ton	Tons	Amount	Per ton	
Total commercial and captive, over 50 tons:										
Original totals—C. D.—Exhibit 245				6,863,816	\$16,345,071	\$2.3813	3,513,892	\$326,726	\$0.0930	\$2.4743
Net change from test audit of June 3					-3,939			-31		
Items queried by consumers counsel and disallowed (all such items related to commercial mines)				-14,158	-65,169		-14,038	-1,200		
Development disallowance				-14,158	-69,108		-14,038	-2,904		
Net revisions										
Revised total				6,849,658	16,275,963	2.3762	3,499,854	323,816	.0926	2.4687
Mines under 50 tons:										
Original totals—C. D.—Exhibit 245				142,472	284,617	1.9977	137,846	2,877	.0209	2.0185
Net change from test audit of June 3										
Items queried by consumers counsel and disallowed										
Net revisions										
Revised total				142,472	284,617	1.9977	137,846	2,877	.0209	2.0185
Total ascertainable tonnage:										
Original totals—C. D.—Exhibit 245				7,006,288	16,629,688	2.3735	3,651,738	329,597	.0908	2.4638
Net revisions				-14,158	-69,108		-14,038	-2,904		
Revised total				6,992,130	16,560,580	2.3685	3,637,700	326,693	.0908	2.4583
Commercial—Over 50 tons:										
Original totals—C. D.—Exhibit 246				3,238,190	7,823,939	2.4162	3,163,741	330,927	.1013	2.5175
Net change from test audit of June 3					-1,210			-31		
Items queried by consumers counsel and disallowed				-14,158	-65,169		-14,038	-1,200		
Development disallowance				-14,158	-69,108		-14,038	-2,904		
Net revisions										
Revised total				3,224,032	7,757,580	2.4062	3,154,703	318,023	.1008	2.5070
Total commercial—Over and under 50 tons:										
Original totals—C. D.—Exhibit 246				3,380,662	8,108,576	2.3983	3,306,587	323,804	.0979	2.4964
Net revisions				-14,158	-69,108		-14,038	-2,904		
Revised total				3,366,504	8,042,197	2.3889	3,292,549	320,900	.0975	2.4864
Captive mines—Over 50 tons:										
Original totals—C. D.—Exhibit 246										
Net change from test audit of June 3										
Items queried by consumers counsel and disallowed										
Net revisions										
Revised total										

1 Same as for total commercial and captive, over 50 tons.

2 No exhibit.

TABLE 3.—Adjustments for Federal Unemployment and Bituminous Coal Act Taxes Applied to the Revised Costs, District No. 13-A1C, Commercial and Captive, 7 Months June-December 1937, as Reported by the Bureau of Research and Statistics of the Commission Incorporating Therein All Revisions and Disallowances Resulting From the Public Hearing in Docket 15—Continued

II. COMPUTATION OF ADJUSTED COSTS

[Following methods in Exhibit No. 245, District No. 13 A-3]

	Net tons	Cost determination				
		Statistical bureau data		1937 compared with 1936 (2-1)	Adjustments to reflect current costs	Adjusted cost
		Year 1936	7 months 1937			
Total mines over and under 50 tons daily	1936	7 months 1937				
Total producing and administrative cost:						
1. Mines over 50 tons daily	12,338,438	7,902,738	Per ton \$2.1122	Per ton \$2.3806	Per ton \$0.2683	Per ton \$2.4024
2. Mines under 50 tons daily	173,100	155,692	Per ton 1.9969	Per ton 2.0224	Per ton .0255	Per ton 2.0277
3. Total	12,511,538	8,058,430	2.1106	2.3735	.2649	2.3972
Selling cost on coal sold commercially:						
4. Mines over 50 tons daily	6,855,920	4,011,846	Per ton .0752	Per ton .0920	Per ton .0168	Per ton .0835
5. Mines under 50 tons daily	169,990	150,224	Per ton .0235	Per ton .0208	Per ton (.0027)	Per ton .0208
6. Total	7,025,910	4,162,070	Per ton .0739	Per ton .0894	Per ton .0164	Per ton .0820
Total producing, administrative and selling costs:						
4) Mines over 50 tons daily (line 1+line 4)			2.1874	2.4725	.2851	2.4859
5) Mines under 50 tons daily (line 2+line 5)			2.0204	2.0432	.0228	2.0485
Total (line 3+line 6)			2.1845	2.4629	.2813	2.4792
Producing and administrative cost per ton						
Selling cost per ton						
Total cost per ton						
Net changes in adjusted costs caused by the revisions and disallowances resulting from the hearing:						
Before revisions and disallowances (as given in exhibit No. 245)						
After revisions and disallowances						
Net change—Increase or (decrease)						

TABLE 3.—Adjustments for Federal Unemployment and Bituminous Coal Act Taxes Applied to the Revised Costs, District No. 13-A1C, Commercial and Captive, 7 Months June-December 1937, as Reported by the Bureau of Research and Statistics of the Commission Incorporating Therein All Revisions and Disallowances Resulting From the Public Hearing in Docket 15

I. COMPUTATION OF ADJUSTMENTS

[Following methods in exhibit No. 245, District No. 13 A-1 and A-2]

Cost form item	1937 costs			Adjustment, increase (decrease)
	Tons	Amount	Per ton	
Mines over 50 tons daily:				
Producing and administrative cost:				
Unemployment tax:				
As shown in C. D. 1	7,917,165	\$256,419	\$0.0324	
Effect of changes resulting from audit, etc.	-14,427	-812		
Revised as result of audit, etc.	7,902,738	255,607	.0323	1 \$0.0162
Bituminous Coal Act tax:				
(Tax paid on items 1 and 2 coal):				
As shown in C. D. 1	7,917,165	33,647	.0042	
Effect of changes resulting from audit, etc.	-14,427			
Revised as result of audit, etc.	7,902,738	33,647	.0043	1 .0057
Selling costs on coal sold commercially:				
Bituminous Coal Act tax:				
(Tax paid on item 4 coal):				
As shown in C. D. 1	4,026,141	34,384	.0085	
Effect of changes resulting from audit, etc.	-14,295	-141		
Revised as result of audit, etc.	4,011,846	34,243	.0085	1 (.0085)
Net adjustment—Mines over 50 tons daily				.0134
Mines under 50 tons daily:				
Producing and administrative cost:				
Unemployment tax:				
(Taken at 1/2 of mines over 50 tons)				.0081
Bituminous Coal Act tax:				
(Taken at same as mines over 50 tons)				(.0028)
Net adjustment—Mines under 50 tons daily				.0053

1 Increase from 2 percent to 3 percent for 1938 reflected by 1/2 of 1937 cost per ton.

2 Increase to reflect full incidence of 1 cent per ton.

3 Eliminated as full incidence is reflected in (7).

TABLE 3a.—Adjustments for Federal Unemployment and Bituminous Coal Act Taxes Applied to the Revised Costs, District No. 13-A1C, Commercial and Capital, 6 Months, July-December 1937, as Reported by the Bureau of Research and Statistics of the Commission Incorporating Therein All Revisions and Disallowances Resulting From the Public Hearing in Docket 15—Continued

II. COMPUTATION OF ADJUSTED COSTS

[Following methods in exhibit Nos. —, District No. 13 A-3]

	Net tons	Cost determination				
		Statistical bureau data		1937 compared with 1936 (2-1)	Adjustments to reflect current costs	Adjusted cost
		Year 1936	6 months 1937			
Total mines over and under 50 tons daily	1936	1937				
Total producing and administrative cost:						
1. Mines over 50 tons daily	12,338,438	6,849,638	Per ton \$2.1122	Per ton \$0.2640	Per ton \$0.0217	Per ton \$2.3979
2. Mines under 50 tons daily	175,100	142,472	Per ton \$1.9969	Per ton \$1.9977	Per ton \$0.0008	Per ton \$2.0018
3. Total	12,513,538	6,992,130	2.1106	2.3685	.0215	2.3924
Selling cost on coal sold commercially:						
4. Mines over 50 tons daily	6,855,920	3,499,854	.0752	.0925	(.0064)	.0831
5. Mines under 50 tons daily	168,990	137,846	.0235	.0209	(.0025)	.0200
6. Total	7,024,910	3,637,700	.0739	.0898	(.0091)	.0816
Total producing, administrative and selling costs						
Mines over 50 tons daily (line 1+line 4)			2.1874	2.4687	.2813	2.4810
Mines under 50 tons daily (line 2+line 5)			2.0204	2.0186	(.0015)	2.0227
Total (line 3+line 6)			2.1845	2.4583	.2711	2.4740
Net changes in adjusted costs caused by the revisions and disallowances resulting from the hearing:						
Before revisions and disallowances (as given in exhibit No. —)						
After revisions and disallowances						
Net change—Increase or (decrease)						

1 Increase from 2 to 3 percent for 1938 reflected by one-half of 1937 cost per ton.
 2 Increase to reflect full incidence of 1 cent per ton.
 3 Eliminated as full incidence is reflected in footnote 2.

TABLE 3a.—Adjustments for Federal Unemployment and Bituminous Coal Act Taxes Applied to the Revised Costs, District No. 13-A1C, Commercial and Capital, 6 Months, July-December 1937, as Reported by the Bureau of Research and Statistics of the Commission Incorporating Therein All Revisions and Disallowances Resulting From the Public Hearing in Docket 15

I. COMPUTATION OF ADJUSTMENTS

[Following methods in Exhibit Nos. —, District No. 13 A-1 and A-2]

Cost form item	1937 costs			Adjustment, increase (decrease)
	Tons	Amount	Per ton	
Mines over 50 tons daily:				
Producing and Administrative cost:				
Unemployment tax	6,863,816	\$223,177	\$0.0325	
As shown in C. D. 1	-14,158	-744		
Effect of changes resulting from audit, etc.				
Revised as result of audit, etc.				\$0.0163
Bituminous Coal Act tax:				
(Tax paid on items 1 and 2 coal)	6,849,638	222,433	.0325	
As shown in C. D. 1				
Effect of changes resulting from audit, etc.	6,863,816	31,648	.0046	
Revised as result of audit, etc.				
15 1.	6,849,638	31,648	.0046	.0034
Selling costs on coal sold commercially:				
Bituminous Coal Act tax:				
(Tax paid on item 4 coal)				.0217
As shown in C. D. 1				
Effect of changes resulting from audit, etc.				
Revised as result of audit, etc.				
Net adjustment—Mines over 50 tons daily				
Mines under 50 tons daily:				
Producing and administrative cost:				
Unemployment tax:				
(Taken at one-half of mines over 50 tons)	3,513,822	32,963	.0094	
As shown in C. D. 1	-14,038	-139		
Effect of changes resulting from audit, etc.				
Revised as result of audit, etc.				
Net adjustment—Mines under 50 tons daily				
Bituminous Coal Act tax:				
(Taken at same as mines over 50 tons)	3,499,854	32,824	.0094	
As shown in C. D. 1				
Effect of changes resulting from audit, etc.				
Revised as result of audit, etc.				
Net adjustment—Mines under 50 tons daily				

1 Increase from 2 to 3 percent for 1938 reflected by one-half of 1937 cost per ton.
 2 Increase to reflect full incidence of 1 cent per ton.
 3 Eliminated as full incidence is reflected in footnote 2.

TABLE 4.—Adjustments for Federal Unemployment and Bituminous Coal Act Taxes Applied to the Revised Costs, District No. 13—AlaC, 7 Months June-Dec. 1937, Commercial (Excluding Captive), as Reported by the Bureau of Research and Statistics of the Commission Incorporating Therein All Revisions and Disallowances Resulting From the Public Hearing in Docket 15—Continued

II. COMPUTATION OF ADJUSTED COSTS

[Following methods in Exhibit Nos. 246, District No. 13 A-3]

Total mines over and under 50 tons daily	Net tons		Cost determination				
	1936	7 months 1937	Statistical bureau data		1937 compared with 1936 (2-1)	Adjustments to reflect current costs	Adjusted cost
			Year 1936	7 months 1937			
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Total producing and administrative cost:							
1. Mines over 50 tons daily	6,104,935	3,665,755	\$2,2198	\$2,4221	Per ton \$0.2023	Per ton \$0.2052	Per ton \$2.4153
2. Mines under 50 tons daily	175,100	155,692	1.9869	2.0224	.0255	.0683	2.0317
Total	6,279,735	3,821,447	2.2136	2.4088	.1974	.0257	2.4367
Selling cost on coal sold commercially:							
4. Mines over 50 tons daily	6,822,873	3,582,559	.0849	.1011	.0162	(.0086)	.0925
5. Mines under 50 tons daily	169,990	150,224	.0235	.0208	(.0027)		.0208
Total	6,992,863	3,732,783	.0852	.0979	.0157	(.0084)	.0905
Total producing, administrative, and selling costs:							
Mines over 50 tons daily (line 1+line 4)			2.3047	2.5232	.2185	.0176	2.5408
Mines under 50 tons daily (line 2+line 5)			2.0204	2.0432	.0228	.0083	2.0325
Total (line 3+line 6)			2.2968	2.5037	.2131	.0173	2.5272
Net changes in adjusted costs caused by the revisions and disallowances resulting from the hearing:							
Before revisions and disallowances (as given in Exhibit No. 246)							
After revisions and disallowances							
Net change, increase or (decrease)							

TABLE 4.—Adjustments for Federal Unemployment and Bituminous Coal Act Taxes Applied to the Revised Costs, District No. 13—AlaC, 7 Months June-Dec. 1937, Commercial (Excluding Captive), as Reported by the Bureau of Research and Statistics of the Commission Incorporating Therein All Revisions and Disallowances Resulting From the Public Hearing in Docket 15

I. COMPUTATION OF ADJUSTMENTS

[Following methods in Exhibit No. 246, District No. 13 A-1 and A-2¹]

Cost form item	1937 costs			Adjustment, increase (decrease)
	Tons	Amount	Per ton	
Mines over 50 tons daily:				
Producing and administrative cost:				
As shown in C. D. 1 a.	3,680,182	121,900	.0332	
Effect of changes resulting from audit, etc.	-14,427	-812		
Revised as result of audit, etc.	3,665,755	121,178	.0332	0.0166
Bituminous Coal Act tax (tax paid on items 1 and 2 coal):				
As shown in C. D. 1 a.	3,680,182	1,512	.0004	
Effect of changes resulting from audit, etc.	-14,427			
Revised as result of audit, etc.	3,665,755	1,512	.0004	1.0096
Selling costs on coal sold commercially:				
Bituminous Coal Act tax (tax paid on item 4 coal):				
As shown in C. D. 1 a.	3,496,854	30,820	.0086	
Effect of changes resulting from audit, etc.	-14,295	-141		
Revised as result of audit, etc.	3,582,559	30,679	.0086	.0176
Net adjustment—Mines over 50 tons daily				.0083
Mines under 50 tons daily:				
Producing and administrative Cost:				
Unemployment tax (taken at 1/2 of mines over 50 tons)				
Bituminous Coal Act tax (taken at same as mines over 50 tons)				
Net adjustment—Mines under 50 tons daily				.0010
				.0093

¹ Increase from 2 to 3 percent for 1938 reflected by 1/4 of 1937 cost per ton.

² Increase to reflect full incidence of 1 cent per ton.

³ Eliminated as full incidence is reflected in (b).

TABLE 4a.—Adjustments for Federal Unemployment and Bituminous Coal Act Taxes Applied to the Revised Costs, District No. 13—A1aC, Commercial (Excluding Captive), 6 Months, July–December 1937, as Reported by the Bureau of Research and Statistics of the Commission Incorporating Therein All Revisions and Disallowances Resulting From the Public Hearing in Docket 15

I. COMPUTATION OF ADJUSTMENTS

[Following methods in Exhibit Nos. — District No. 13 A-1¹ and A-2¹]

	Cost form item	1937 costs			Adjustment, increase (decrease)
		Tons	Amount	Per ton	
Mines over 50 tons daily:					
Producing and administrative cost:					
Unemployment tax	10 k				
As shown in C.D. 1 ¹		3,238,190	\$107,773	\$0.0333	
Effect of changes resulting from audit, etc.		-14,158	-744		
Revised as result of audit, etc.		3,224,032	107,029	.0332	\$0.0166
Bituminous Coal Act tax (tax paid on items 1 and 2 coal):	10 l				
As shown in C.D. 1 ¹		3,238,190	1,367	.0004	
Effect of changes resulting from audit, etc.		-14,158			
Revised as result of audit, etc.		3,224,032	1,367	.0004	.0096
Selling costs on coal sold commercially:					
Bituminous Coal Act tax (tax paid on item 4 coal):	15 l				
As shown in C.D. 1 ¹		3,168,741	29,673	.0094	
Effect of changes resulting from audit, etc.		-14,038	-139		
Revised as result of audit, etc.		3,154,703	29,534	.0094	1 (.0094)
Net adjustment—Mines over 50 tons daily					.0168
Mines under 50 tons daily:					
Producing and administrative cost:					
Unemployment tax (taken at one-half of mines over 50 tons)					.0083
Bituminous Coal Act tax (taken as same as mines over 50 tons)					.0002
Net adjustment—Mines under 50 tons daily					.0085

¹ Increase from 2 to 3 percent for 1938 reflected by 1/2 of 1937 cost per ton.² Increase to reflect full incidence of 1 cent per ton.³ Eliminated as full incidence is reflected in footnote 2.

II. COMPUTATION OF ADJUSTED COSTS

[Following methods in Exhibit Nos.—District No. 13 A-3¹]

	Net tons		Cost determination				
	1936	6 months 1937	Statistical Bureau data		1937 compared with 1936 (2-1)	Adjustments to reflect current costs	Adjusted cost
			Year 1936	6 months 1937			
			(1)	(2)	(3)	(4)	(5)
Total mines over and under 50 tons daily							
Total producing and administrative cost:			Per ton	Per ton	Per ton	Per ton	Per ton
1. Mines over 50 tons daily	6,104,635	3,224,032	\$2.2198	\$2.4062	\$0.1864	\$0.0262	\$2.4324
2. Mines under 50 tons daily	175,100	142,472	1.9969	1.9977	.0008	.0085	2.0062
3. Total	6,279,735	3,366,504	2.2136	2.3889	.1812	.0257	2.4205
Selling cost on coal sold commercially:							
4. Mines over 50 tons daily	5,922,873	3,154,703	.0849	.1008	.0159	(.0094)	.0914
5. Mines under 50 tons daily	169,990	137,846	.0235	.0209	(.0026)		.0209
6. Total	6,092,863	3,292,549	.0832	.0975	.0153	(.0091)	.0894
Total producing, administrative and selling costs:							
Mines over 50 tons daily (line 1+line 4)			2.3047	2.5070	.2023	.0168	2.5238
Mines under 50 tons daily (line 2+line 5)			2.0204	2.0186	(.0018)	.0085	2.0271
Total (line 3+line 6)			2.2968	2.4864	(.1965)	.0166	2.5009
Net changes in adjusted costs caused by the revisions and disallowances resulting from the hearing:							
Before revisions and disallowances (as given in Exhibit No. —)					\$2.4304	\$0.0899	\$2.5203
After revisions and disallowances					2.4205	.0894	2.5099
Net change—Increase or (decrease)					(.0099)	(.0005)	(.0104)

TABLE 5.—District Board's Determination of the Adjusted Costs of the Mines Over 50 Tons Daily Capacity and of the Total Ascertainable Tonnage in District No. 13 Revised To Incorporate All Changes and Disallowances Resulting From the Record in the Public Hearing in Docket No. 15

Item	Total commercial and captive mines over 50 tons daily capacity	Total ascertainable tonnage including mines under 50 tons daily capacity
Producing and administrative costs:		
District Board's determination as presented in record. Exhibit No. 247-248.	\$2.3797	\$2.3743
Transfer of sales tax from selling schedule to producing and administrative schedule per table 7.	.0000	.0000
Addition resulting from re-tabulation of mines under 50 tons daily capacity, in audit of tabulations of June 7, 1938, not submitted to District Board prior to hearing (Exhibit 236, tr. 227-228).	None	+ .0007
Deductions resulting from revisions and disallowances on tabulations of Statistical Division:		
For 1936 Appendix Table 1:	— .0081	— .0080
Transfer of Coal Act tax from selling schedule to producing and administrative schedule and increase to allow for full incidence of tax ² .	+ .0094	+ .0093
Total producing and administrative	2.3810	2.3768
Average selling costs on all coal produced including captive coal:		
District Board's determination as presented in record. Exhibit No. 247-248 ³ .	.0495	.0490

¹ The District Board submitted its determinations April 28, 1938 (Ex. 247-248) and accepted as accurate the cost data from Statistical Bureau No. 13 submitted to it by the Commission. In the test audit of June 1938 the Bureau of Research and Statistics made a complete re-tabulation of the reports for small mines under 50 tons daily capacity in District 13 (tr. 227) which resulted in a net increase in the district total cost of 1 mill per ton (Ex. 235, tr. 228).

As the change was negligible, it was not formally submitted to the District Board prior to the hearing. The 1 mill increase in total cost is here properly apportioned between producing-administrative cost and selling cost.

² As the District Board applied its computed adjustments to the 1936 costs reported by the Commission for mines of over 50 tons daily capacity (Ex. 248, tr. 251-253), its determination would be subject to any disallowances of which, derived from appendix table 1, are here indicated. No disallowances were made in the costs of the mines under 50 tons daily capacity for either 1936 or 1937 other than those resulting from the re-tabulation of 1936 described in footnote 1 and previously allowed for. Witness for the Board approved the test audit and the review of out-of-line items made by the Bureau of Research and Statistics (tr. 257-258).

³ Analysis of the Board's Exhibit 248, page 4 indicates that the 1936 selling cost for mines over 50 tons daily capacity (based upon the \$521,270 amount expended for selling in Commission Exhibit 232, item 14, divided by the total production of 12,368,678 tons) includes \$0.0003 for item 131, tax paid under the Coal Act of 1935 (\$4.243 ÷ 12,368,678 tons). The adjustment applied by the Board to the 1936 selling cost amounts to \$0.0074 per ton. This consists of the amounts paid out in the 9 months of 1937 (Ex. 237) for Coal Act Tax namely, item 10-1 (\$33,531) plus item 151 (\$34,326) a total of \$67,857 divided by the total production during the same period of 8,875,146 tons, or \$0.0077 per ton, minus the \$0.0003 charged in 1936. The per ton amount contained in the Board's computation of selling cost which is applicable to the Coal Act tax is here transferred to producing and administrative expense. The transfer amounts to \$0.0077 per ton for the mines over 50 tons daily and \$0.0076 for all mines, including proper allowance for those of under 50 tons. The Coal Act requires the payment of a tax of 1 cent per ton. In the case of mines over 50 tons daily capacity the Board had already charged \$0.0006 on account of this tax

TABLE 5.—District Board's Determination of the Adjusted Costs of the Mines Over 50 Tons Daily Capacity and of the Total Ascertainable Tonnage in District No. 13 Revised To Incorporate All Changes and Disallowances Resulting From the Record in the Public Hearing in Docket No. 15—Continued

Item	Total commercial mines over and under 50 tons daily capacity	Total ascertainable tonnage including mines over 50 tons daily capacity
Average selling costs etc.—Continued.		
Transfer of sales tax from selling schedule to producing and administrative schedule (Exhibit 248)	\$0.0000	\$0.0000
Adjustment resulting from revaluation of mines under 50 tons daily capacity in audit of tabulations of June 7, 1938, not submitted to District Board prior to hearing (Exhibit 248, tr. 227-228) ¹	None	+ .0003
Deductions resulting from revisions and disallowances on tabulations of Statistical Division: For 1936 Appendix table 1: Transfer of Coal Act tax from selling schedule to producing and administrative schedule ¹	-.0005 -.0077	-.0005 -.0076
Total selling cost	.0413	.0412

to the item 10-1 under "other operating charges" in Exhibit 248. To this amount is here added \$0.0064 per ton which consists of the \$0.0077 transferred from the selling schedule plus \$0.0017 to bring the total charge up to the statutory rate of 1 cent per ton. For all mines the addition to the producing and administrative schedule is \$0.0065 per ton, including proper allowance for those under 50 tons.

¹ District Board No. 13 computed the cost of selling by dividing the total sum expended in selling as reported by all producers including the captive mines, by the total tonnage of coal produced (Ex. 248). The divisor used by the Board thus included captive coal and coal used by the producer on which no selling cost was incurred. Since much of the District output consists of such captive coal which carries no selling cost the Board's method of computation gives an answer much below the selling costs of the commercial tonnage. Witness for the Board (Tr. 256) explained that "the figure of \$0.0495 is a reasonable weighted average of the total selling costs of all of the ascertainable tonnage of coal produced in our district of both commercial and captive mines over 50 tons daily capacity." He stated that the Board did not recommend \$0.0495 as a reasonable selling cost of commercial coal. He further stated that "the figure of \$0.0019 is a reasonable weighted average cost of selling coal which is sold commercially in our district." (The figure of \$0.0019 is that reported in Commission Exhibit 244 as the average selling cost for coal sold commercially by all mines over and under 50 tons daily capacity in the last 9 months of 1937, and includes an item of approximately \$0.0075 per ton representing the tax paid under the Bituminous Coal Act.)

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TABLE 5.—District Board's Determination of the Adjusted Costs of the Mines Over 50 Tons Daily Capacity and of the Total Ascertainable Tonnage in District No. 13 Revised To Incorporate All Changes and Disallowances Resulting From the Record in the Public Hearing in Docket No. 15—Continued

Item	Total commercial mines over and under 50 tons daily capacity	Total ascertainable tonnage including mines over 50 tons daily capacity
Total producing, administrative, and selling cost: District Board's determination as presented in record. Exhibit No. 247-248	\$2.4292 (.0000)	\$2.4238 (.0000)
Sales tax adjustment—net Net deductions or additions resulting from record, as indicated by items above	-.0060	-.0053
Total producing, administrative, and selling costs	2.4233	2.4180

Footnotes start on preceding page.

TABLE 6.—Bureau of Research and Statistics' Computation of the Actual Costs of July-December 1937, in District No. 13, Adjusted for All Factors Operative Since January 1, 1938, for Which Proof Was Supplied in the Record

Item	Total commercial mines over and under 50 tons daily capacity	Total ascertainable tonnage including mines over and under 50 tons daily capacity
Producing and administrative cost: Actual costs July-December 1937 with adjustments for Federal Unemployment and Bituminous Coal Act taxes (incorporating all revisions and disallowances) appendix tables 2a and 4a Transfer of sales tax from selling schedule to producing and administrative schedule per table 8	\$2.4205 (.0000)	\$2.3924 (.0000)

TABLE 6.—Bureau of Research and Statistics' Computation of the Actual Costs of July-December 1937, in District No. 13, Adjusted for All Factors Operative Since January 1, 1938, for Which Proof Was Supplied in the Record—Continued

Item	Total commercial mines over and under 50 tons daily capacity	Total ascertainable tonnage including mines over and under 50 tons daily capacity
Producing and administrative cost: Continued Adjustments for other factors operative since Jan. 1, 1938, proposed by District Board and established by the record	None	None
Total producing and administrative	\$2.4205	\$2.3924
Selling costs on coal sold commercially: Actual costs July-December 1937 with adjustments for Federal Unemployment and Bituminous Coal Act taxes (incorporating all revisions and disallowances) appendix tables 2a and 4a Transfer of sales tax from selling schedule to producing and administrative schedule per table 8	.0894	.0816
Adjustments for other factors operative since Jan. 1, 1938, proposed by District Board and established by the record	None	None
Total selling cost	\$2.5099	\$2.4740

¹ The tax payable under the Bituminous Coal Act is here charged to producing and administrative expense rather than to selling cost

TABLE 7.—Transfer of Sales Taxes From Selling Schedule to Producing and Administrative Schedule Year 1936, District No. 13

Item	Total commercial mines over and under 50 tons daily capacity	Total ascertainable tonnage including mines over and under 50 tons daily capacity
Tons produced, per findings, table 1	6,279,735	12,315,638
Tons all other sales, per findings, table 1	6,092,863	7,025,910
Producing and administrative costs, per findings, table 1	\$13,900,518	\$26,410,691
Add: Sales tax (C. D. 1, item 13 b) ¹ Sales tax (C. D. 1, item 15 a)	15	15
Total addition	15	15
Producing and administrative costs, adjusted	\$13,900,518	\$26,410,706
Selling costs on coal sold commercially, per findings, table 1	506,858	510,456
Deduct: Sales tax (C. D. 1, item 13 b) ¹ Sales tax on coal sold commercially, adjusted	15	15
Total cost, producing, administrative and selling, per findings, table 1	2,2968	2,1845
Total cost, producing, administrative and selling, adjusted	2,2968	2,1845

¹ Amounts for commercial mines only taken from C. D. 1-a.

TABLE 6.—Bureau of Research and Statistics' Computation of the Actual Costs of July-December 1937, in District No. 13, Adjusted for All Factors Operative Since January 1, 1938, for Which Proof Was Supplied in the Record—Continued

Item	Total commercial mines over and under 50 tons daily capacity	Total ascertainable tonnage including mines over and under 50 tons daily capacity
proposed by District Board and established by the record	None	None
Total selling cost	\$0.0894	\$0.0816
Total producing, administrative, and selling cost: Actual costs July-December 1937 with adjustments for Federal Unemployment and Bituminous Coal Act taxes (incorporating all revisions and disallowances) Sales tax adjustment—net Total adjustments for other factors operative since Jan. 1, 1938, as itemized above	2.5099 (.0000) None	2.4740 (.0000) None
Total producing, administrative, and selling costs	2.5099	2.4740

¹ The tax payable under the Bituminous Coal Act is here charged to producing and administrative expense rather than to selling cost

TABLE 8.—Transfer of Sales Taxes From Selling Schedule to Producing and Administrative Schedule July–December 1937, District No. 13

Item	Total commercial mines over and under 50 tons daily capacity		Total ascertainable tonnage including captive mines	
	Amount	Per ton	Amount	Per ton
Tons produced, per findings table 2-b.....	3,366,504		6,932,130	
Tons all other sales, per findings table 2-b.....	3,292,549		3,637,700	
Producing and administrative costs, per findings table 2-b.....	\$8,042,197	\$2.3889	\$16,560,580	\$2.3685
Add:				
Sales tax (C.D. 1, item 15 h.) ¹				
Sales tax (C.D. 1, item 17 a.) ¹				
Total addition.....				
Producing and administrative costs, adjusted.....	8,042,197	2.3889	16,560,580	2.3685
Selling costs on coal sold commercially, per findings table 2-b.....	320,900	.0975	326,693	.0898
Deduct:				
Sales tax (C.D. 1, item 15 h.) ¹				
Selling costs on coal sold commercially, adjusted.....	320,900	.0975	326,693	.0898
Total cost, producing, administrative and selling, per findings Table 2-b.....		2.4864		2.4583
Total cost, producing, administrative and selling, adjusted.....		2.4864		2.4583

¹ Amounts for commercial mines only taken from C.D. 1-a.

MINIMUM PRICE AREA 3

On the basis of the foregoing findings of fact and after due consideration of all the evidence, the Commission finds the weighted average of the total costs of the ascertainable tonnage produced in Minimum Price Area 3 in the calendar year 1936, adjusted to give effect to changes in wage rates, hours of employment, or other factors substantially affecting costs, exclusive of seasonal changes, and to reflect as accurately as possible changes, which have been established since January 1, 1936, to be \$2.4382 per ton.

By the Commission.

Dated this 25th day of May 1939.

[SEAL] PERCY TETLOW,
Chairman.

MINIMUM PRICE AREA No. 4—DISTRICT No. 14

Composite tabulations of cost data showing the weighted average of the total costs of the ascertainable tonnage produced in District No. 14 in the calendar year 1936 were submitted to the District Board for said District by the proper Statistical Bureau of the Commission. These tabulations were introduced in evidence as Exhibits Nos. 218, 219, and 220 and show a total producing and administrative cost of \$2.9321 per ton, and a selling cost on coal sold commercially of \$0.2545 per ton, the sum of

the two being designated as total producing, administrative and selling costs, amounting to \$3.1866 per ton.

The Bureau of Research and Statistics, as a result of its test audit and its check of out-of-line items queried by the office of the Consumers' Counsel, recommended the revision and disallowance of items of 1936 costs totalling \$0.0085 per ton for the total ascertainable tonnage of the District. Details of these revisions and disallowances are given in full in Table No. 1 for District No. 14, in the Appendix.

Earl Cobb, of Fort Smith, Arkansas, a member and Secretary-Treasurer of District Board No. 14, appeared as a witness on behalf of District Board No. 14. Mr. Cobb testified that he has been a member and Secretary-Treasurer of said Board ever since it was organized under the present Act, and prior thereto was a member of the Code Authority for what is now District No. 14 during the NRA period, and a member of the District Board for said District during the entire period that the Bituminous Coal Conservation Act of 1935 was in operation, and had served on most of the committees that were appointed by these three organizations to study prices, classifications and grades of coal.

Mr. Cobb has had more than thirty years' experience in the bituminous coal industry. Since 1908 he has been President of and has had charge of sales of the Southwestern Coal Company. Prior to

1923 that company sold coals produced principally in Northern New Mexico, but since then it has sold coals produced principally in Arkansas and Oklahoma. Since 1924 he has been President of and had charge of operations and sales of the Sans Bois Coal Company which operates mines in Oklahoma, and President or Vice President of and had charge of operations and sales of the Sun Smokeless Coal Company, which operates a mine in Arkansas.

District Board No. 14 consists of twelve producer members and one labor member. The producer members were chosen so that each of the various coal fields within the District would have at least one producer member on the Board. Each and every producer member of the Board is an experienced mine operator actively producing coal within the District, and the labor member of the Board is familiar with labor conditions throughout the District. Upon receipt of the 1936 cost data from the Statistical Bureau the members of the Board gave careful consideration and study thereto and, as a result of their personal knowledge of the costs of production in the District, considered the Bureau's figures to be based upon the best obtainable information and to be accurate. The District Board therefore accepted the computations of the Statistical Bureau as its determination of the weighted average of the total costs of the ascertainable tonnage produced in the District during the calendar year 1936, and also agreed to accept the revisions and disallowances proposed by the Bureau of Research and Statistics as a consequence of its test audit and its investigation of out-of-line items.

However, since we have found that the weighted average of the costs of selling must be computed by using as a divisor the total ascertainable tonnage produced in a district, the computations set forth in Table 1 for District No. 14 in the Appendix, which incorporates all revisions and disallowances resulting from the record as recommended by the Bureau of Research and Statistics and accepted by the District Board, should be further adjusted to include in the divisor used in weighting the costs of selling not only coal sold commercially but also all other tonnage produced in the District. We, therefore, find that the weighted average of the total costs of the ascertainable tonnage produced in District No. 14, and the weighted average of the total costs of the tonnage of the commercial mines of the District, for the calendar year 1936, are as follows:

Weighted Average of the Total Costs per Ton in the Calendar Year 1936

TOTAL COMMERCIAL MINES OVER AND UNDER 50 TONS DAILY CAPACITY

[Incorporating all revisions and disallowances resulting from the record. Sales taxes are here charged to producing and administrative cost rather than to selling cost]

	Tons (1)	Adjusted cost per ton (2)	Amount (3)	Weighted average of total tons produced (4) (3÷1)
Producing and administrative cost:				
Tons produced, 1936.....	1,892,784	\$2.9535	\$5,590,358	\$2.9535
Reasonable selling cost:				
Tons sold commercially.....	1,876,469	.2535	475,583	XX
All other coal.....	16,315	0	0	XX
Total.....	1,892,784		475,583	.2513
Total producing, administrative and selling cost as determined by the Commission.....			6,065,941	3.2048

TOTAL ASCERTAINABLE TONNAGE, INCLUDING CAPTIVE MINES

Producing and administrative cost:				
Tons produced, 1936.....	1,932,783	\$2.9247	\$5,652,767	\$2.9247
Reasonable selling cost:				
Tons sold commercially.....	1,876,469	.2534	475,583	X
All other coal.....	56,314	0	0	X
Total.....	1,932,783		475,583	.2460
Total producing, administrative and selling cost as determined by the Commission.....			6,128,350	3.1707

To assist District Board No. 14 in its determination of the adjusted costs, the Statistical Bureau computed the actual costs for the nine-months' period, April 1 to December 31, 1937, the latest period for which cost data were available at the increased wage rates effective April 1, 1937, for submission to the District Board. These tabulations, which were introduced in evidence as Exhibits Nos. 221 to 225, inclusive, were transmitted to the District Board on April 20, 1938, with the explanation that they were subject to change by reason of the addition of later reports and upon completed review. Final tabulations incorporating the later reports and the completed review, which were introduced in evidence as Exhibits Nos. 226 to 228, inclusive, were transmitted to the District Board on June 9, 1938.

Upon completion of these final tabulations of the costs for the last nine months of 1937, it became apparent that District No. 14 was unduly affected by the seasonal factor of idle-month costs. The final tabulations (Exhibits 226-228) showed an unusually high increase of \$0.2428 per ton over the preliminary tabulations (Exhibits 221-225), which did not include idle-month costs. A careful analysis of this large increase in the indicated cost per ton showed that it was chiefly due to the idle-month expenses attaching to mines that were closed down during the summer season. While such idle-month costs constitute a very real expense to the operator and are, therefore, a definite part of the costs of production, the demand is so highly seasonal as to make the average for nine months misleading. Therefore, the Bureau of Research and Statistics devoted considerable study to the problem of

eliminating the effect of the seasonal factor in the cost determinations for this District, working in consultation with the District Board and, as a result, Exhibit No. 229 was prepared. The seasonal factor was eliminated by compiling cost data for 1937 on the basis of a full year. In so doing, a special tabulation was made of the actual costs reported in each of the three months of January, February and March, 1937, and all cost items affected by the new wage rate were raised by an appropriate amount after conference with members of the Board. The adjusted amounts thus obtained for the first three months of 1937 were added to the figures of the nine months' period and the total represented 1937 costs. This procedure eliminated the effects of seasonal change. The method adopted by the Statistical Bureau of determining the costs for the first quarter of 1937, adjusted to the new wage level, and then computing the costs for the full calendar year 1937, avoids the effect of the highly seasonal changes in production in this District in a satisfactory manner. While many mines were technically on suspension during the month of April pending wage adjustments, the demand is so seasonal in the District that it is a normal thing to suspend operation in the spring or summer to the extent of ninety per cent of the mines in the District, and therefore, the inclusion of the costs of the month of April in the 1937 cost computations gives a result that is reasonably representative while the elimination of the costs of that month would have depressed the 1937 costs below a fair level.

From the known trend of production, the average cost of production in District No. 14 was higher during the first quarter

of 1938 than it was for the calendar year 1937 and therefore the average cost derived from the 1937 actual experience represents a conservative figure as far as District No. 14 is concerned.

All the primary tabulations of the Bureau of Research and Statistics for 1937 were subjected to the test audit, check of out-of-line items queried by the office of the Consumers' Counsel and search for mines on development basis not properly chargeable to costs. The revisions and disallowances resulting are set forth in detail in Appendix Tables 2 and 2a for District 14.

As a further aid to the determination of the adjusted costs, the Bureau of Research and Statistics also computed adjustments for two factors not fully reflected in the 1937 costs, namely, the Federal Unemployment Tax and the full incidence of the tax under the Bituminous Coal Act. The record also showed the necessity of a further adjustment to reflect an increase in District Board expense.

The computation of the actual costs for the calendar year 1937, as adjusted, incorporating all revisions and disallowances, gives the following result: (Details in Appendix, Tables 2a and 6, District No. 14. Such adjustments as may be necessary to provide for the inclusion of tonnage other than coal sold commercially in the weighting of the cost of selling appear in subsequent findings herein.)

Bureau of Research and Statistics' Computation of the Actual Costs of January-December 1937 in District No. 14, Adjusted for Federal Unemployment Tax and Bituminous Coal Act Tax

[Incorporating all rescissions and disallowances resulting from the record. See Appendix Table 6 for District No. 14]

Total ascertainable tonnage including captive mines¹

1. Producing and administrative cost ²	\$3.3208
2. Selling costs per ton on coal sold commercially ³2958

¹ Separate determinations of the adjusted costs of commercial mines only were not made in District No. 14.

² Sales taxes and the tax payable under the Bituminous Coal Act are here charged to producing and administrative cost rather than to selling cost.

The District Board received the data submitted to it by the Statistical Bureau and, as previously stated, accepted as accurate the Bureau's tabulations of the 1936 costs. It likewise made a check of the Bureau's preliminary computations of the weighted average costs for the nine-months' period, April 1 to December 31, 1937, forwarded by the Commission on April 20. From their own expert knowledge of conditions in the District, the Board members considered these costs as being lower than the true

³ Revisions and disallowances for April-December 1937, were read into the record. Care has also been taken to dispose of corresponding items in the costs for January-March, 1937.

1937 costs. However, not having sufficient data to prove the Bureau's costs inadequate, the District Board proceeded to adjust the 1936 costs on the basis of the weighted average of the total ascertainable tonnage for the nine months of 1937 as submitted by the Statistical Bureau, and forwarded a determination to the Commission under date of April 26, 1938.

Thereafter, the Board received from the Bureau of Research and Statistics revised cost data based on the entire year 1937, which included the treatment of idle-month costs and reports from a number of mines that had not been included in the nine-months' costs. The weighted average cost for the full year 1937, as submitted to the Board, was \$3.6049. (Exhibit No. 229). This figure was carefully checked by a Committee of the Board, and the Board concluded that the Bureau's figure was based upon the best obtainable information, and that in the opinion of the individual members of the Board this cost was the correct cost for the year 1937.

Accordingly, the Board redetermined the weighted average of the total costs for the year 1936, adjusted, on the basis of the weighted average cost computations for the full year 1937, as submitted by the Bureau of Research and Statistics. The Board adjusted its 1936 cost determination by adding thereto the increases in such costs as reflected by the costs for the full year of 1937, and made further adjustments to cover the increase in the Unemployment Tax, effective January 1, 1938 and the increase in District Board expense (Exhibit 231). The Board in making the adjustments in costs failed to take into account the full incidence of the Bituminous Coal Act Tax and therefore \$0.0043 must be added to the Board's determination.

The Board accepted the revisions and disallowances recommended by the Bureau of Research and Statistics. With modifications for these factors, the District Board's determination of the weighted average of the total costs of the ascertainable tonnage produced in District No. 14 in the calendar year 1936, as adjusted, is as follows. Such adjustments as may be necessary to provide for the inclusion of tonnage other than coal sold commercially in the weighting of the cost of selling appear in subsequent findings herein.

District Board's Determination of the Adjusted Costs of the Total Ascertainable Tonnage in District No. 14

[Incorporating all revisions and disallowances resulting from the record. See Appendix Table 5 for District No. 14]

Total ascertainable tonnage including captive mines	
Total producing, administrative, and selling cost ¹	\$3.6183

¹ The District Board made no separate determination of selling costs.

The Board's determination of \$3.6183, as previously stated, is almost identical with the computation of \$3.6166 by the Bureau of Research and Statistics. Since the board made no separate determination of selling costs and adjusted the total 1936 costs on the basis of the Bureau's computation of the costs for the year of 1937, and agreed to accept the revisions and disallowances by the Bureau, we find the Bureau's computations to be the weighted average of the total costs of the ascertainable tonnage produced in District 14 in the calendar year 1936 as adjusted.

The figure \$.2958 given for selling cost in the bureau's computation of the adjusted selling cost for 1937 is derived by subtracting from the figure \$.2970 (the weighted average of reported selling cost per ton of coal sold commercially in the district excluding the tax applicable under the Bituminous Coal Act which is here grouped with producing and administrative expenses) sales taxes which were transferred to the producing and administrative expense schedule. All figures are weighted on 1937 tonnage.

Bureau of Research and Statistics' Determination of the Adjusted Costs of All Ascertainable Tonnage in District No. 14

[Revised to incorporate all changes and disallowances resulting from the record (See Appendix Table 6) and further adjusted to reflect the inclusion in the divisor for selling costs of the total tonnage produced in the district]

	Tons (1)	Adjusted cost per ton (2)	Amount (3)	Weighted average of total tons produced (4) (3÷1)
Producing and administrative cost:				
Tons produced, 1936	1,932,783	\$3.3208	\$6,418,386	\$3.3208
Reasonable selling cost:				
Tons sold commercially	1,876,469	.2958	555,060	XX
All other coal	56,314	0	0	XX
Total	1,932,783		555,060	.2872
Total producing, administrative and selling cost as determined by the Commission			6,973,446	3.6080

The Commission, therefore, finds that the weighted average of the total costs of the ascertainable tonnage produced in District No. 14 in the calendar year 1936, as adjusted, is \$3.608 per ton.

DISTRICT NO. 14—APPENDIX

Table 1.—Producing and administrative costs and selling costs in District No. 14 for the year 1936 as reported by the Bureau of Research and Statistics of the Commission incorporating all revisions and disallowances resulting from the record in the public hearing in Docket No. 15.

Table 2.—Producing and administrative costs and selling costs in District No. 14 for the nine months' period, April-December, 1937 as reported by the Bureau of Research and Statistics of the Commission incorporating all revisions and disallowances resulting from the record in the public hearing in Docket No. 15, April-December, 1937.

Approximately 95 per cent of the coal in the district was sold through wholesalers and jobbers on a percentage commission basis. A large part of the production of the district is sold in small lots to dealers for domestic consumption over a large area. This class of business imposes a greater cost of selling than sales to railroads or industrial plants. No statistics are available as to the amount of wholesale discounts for as much as from 5 to 10 per cent of the total production of the district.

The weight of the evidence is to the effect that the figure submitted by the statistical bureau as the selling cost for the full year 1937 is a reasonable selling cost for the district.

The Commission is of the opinion and so finds that the actual records of the costs incurred in marketing coal commercially constitute the best evidence available of the reasonable selling costs and determines the reasonable cost of selling coal commercially in District No. 14 to be \$.2958 per ton.

The adjusted costs of the ascertainable tonnage produced in District No. 14 are as follows:

Table 2a.—Producing and administrative costs and selling costs in District No. 14 for the twelve months' period, January-December, 1937 as reported by the Bureau of Research and Statistics of the Commission incorporating all revisions and disallowances resulting from the record in the public hearing in Docket No. 15, January-December, 1937.

Table 3.—Adjustments for Federal Unemployment and Bituminous Coal Act Taxes applied to the revised costs incorporating therein all revisions and disallowances resulting from the public hearing in Docket No. 15. (Commercial and captive year ending December 1937.)

Table 4.—No Table 4 was prepared for this District.

Table 5.—District Board's determination of the adjusted costs of the total ascertainable tonnage in District No. 14 revised to incorporate all changes and disallowances resulting from the record in the public hearing in Docket No. 15.

TABLE 1.—Producing and Administrative Costs and Selling Costs in District No. 14 for the Year 1936 as Reported by the Bureau of Research and Statistics of the Commission Incorporating All Revisions and Disallowances Resulting From the Record in the Public Hearing in Docket No. 15—Continued

Classification	Rec-ord page No.	Mine code No.	Cost form item No.	Producing and administrative costs			Selling costs on coal sold commercially			Total cost, producing, administrative and selling
				Tons	Amount	Per ton	Tons	Amount	Per ton	
Total commercial—over and under 50 tons:										
Original totals—C. D. 14-18-14-2—Exhibits 219 and 220				1,896,413	\$5,615,299	\$2.9610	1,880,068	\$478,392	\$0.2545	\$3.2155
Net revisions				-3,629	-25,346		-3,599	-2,404		
Revised total				1,892,784	5,589,953	2.9533	1,876,469	475,988	.2537	3.2070
Captive mines—over 50 tons:										
Original totals, C. D. 14-18-14-2—Exhibit 220										
Net change from test audit of June 3										
Items queried by consumers counsel and disallowed										
Net revisions										
Revised total										

These amounts are proper in balancing the items which appear in the record to the total per ton deduction recommended by the Bureau of Research and Statistics.
Same as for "Total commercial and captive, over 50 tons."

TABLE 2.—Producing and Administrative Costs and Selling Costs in District No. 14 for the 9 Months' Period, April-December 1937, as Reported by the Bureau of Research and Statistics of the Commission Incorporating All Revisions and Disallowances Resulting From the Record in the Public Hearing in Docket No. 15

Classification	Rec-ord page No.	Mine code No.	Cost form item No.	Producing and administrative costs			Selling costs on coal sold commercially			Total cost, producing, administrative and selling
				Tons	Amount	Per ton	Tons	Amount	Per ton	
Total commercial and captive, over 50 tons:										
Original totals, C. D. 14-1, 14-3—Exhibit 228	183			1,173,440	\$4,117,261	\$3.5087	1,132,160	\$377,169	\$0.3331	\$3.8418
Net change from test audit of June 3	183				1-5,758			1-31		
Items queried by consumers counsel and disallowed (All such items related to commercial mines)	180/21-153	10 c			-721					
	35-195	10 d			-4-392					
	51-193	10 d			-118,913			-7,703		
	179 9114				-28,175			-28,175		
Development disallowance					-121,132			-7,072		
Net revisions										
Revised total				1,145,265	3,996,129	3.4893	1,103,985	369,497	.3347	3.8240

Table 6.—Bureau of Research and Statistics' computation of the costs of the twelve month period, January-December 1937, in District No. 14, adjusted for all factors operative since January 1, 1938 for which proof was supplied in the record.

Table 7.—Transfer of Sales Taxes from Selling Schedule to Producing and Administrative Schedule, Year 1936.

Table 8.—Transfer of Sales Taxes from Selling Schedule to Producing and Administrative Schedule, January-December 1937.

Classification	Rec-ord page No.	Mine code No.	Cost form item No.	Producing and administrative costs			Selling costs on coal sold commercially			Total cost, producing, administrative and selling
				Tons	Amount	Per ton	Tons	Amount	Per ton	
Total commercial and captive, over 50 tons:										
Original totals—C. D. 14-18-14-2—Exhibits 219 and 220	177			1,882,708	\$5,554,995	\$2.9505	1,830,612	\$473,725	\$0.2593	\$3.2098
Net change from test audit of June 3	178				-8,297			-1,687		
Items queried by consumers counsel and disallowed					1-1,703			1-276		
Development disallowance										
Net revisions										
Revised total										
Mines under 50 tons:										
Original totals—C. D. 14-2—Exhibit 220	177			53,704	122,713	2.2850	53,456	4,607	.0873	2.3723
Net change from test audit of June 3	178				1-3,273					
Items queried by consumers counsel and disallowed										
Net revisions										
Revised total										
Total ascertainable tonnage:										
Original totals—C. D. 14-3—Exhibit 220	178			1,936,412	\$5,677,708	2.9321	1,880,068	\$478,392	.2545	3.1866
Net revisions				-3,629	-25,346		-3,599	-2,404		
Revised total				1,932,783	5,652,362	2.9245	1,876,469	475,988	.2536	3.1781
Commercial—over 50 tons:										
Original totals—C. D. 14-18-14-2—Exhibits 219 and 220	177			1,842,709	\$5,492,586	2.9807	1,836,612	\$473,725	.2593	3.2400
Net change from test audit of June 3	178				1-10,000			1-711		
Items queried by consumers counsel and disallowed										
Development disallowance										
Net revisions										
Revised total				1,839,080	5,463,977	2.9710	1,833,013	471,321	.2585	3.2295

TABLE 2a.—Producing and Administrative Costs and Selling Costs in District No. 14 for the 12 Months' Period, January-December 1937, as Reported by the Bureau of Research and Statistics of the Commission Incorporating All Revisions and Disallowances Resulting From the Record in the Public Hearing in Docket No. 15—Continued

Classification	Rec- ord code pages No.	Mine code No.	Cost form item No.	Producing and administrative costs		Selling costs on coal sold commercially		Total cost, pro- duc- ing, ad- minis- trative and selling
				Tons	Per ton	Tons	Per ton	
Captive mines—over 50 tons: Original totals—C. D.— exhibit								
Net change from test audit of June 3					(2)			
Items queried by Con- sumers Counsel and disallowed								
Net revisions								
Revised total								

1 The disallowances and revisions shown on this table include those for the 9 months previously noted in appendix table 2, which were read into the record, plus other disallowances for the first 3 months of the year. The latter were not specifically read into the record, but are here deducted in order to complete the revisions for the entire year.

2 No exhibit.

3 Same as for "Total commercial and captive, over 50 tons."

4 No exhibit for "Commercial over 50 tons."

TABLE 3.—Adjustments for Federal Unemployment and Bituminous Coal Act Taxes Applied to the Revised Costs, District No. 14-A1C, Commercial and Captive, Year Ending December 1937, as Reported by the Bureau of Research and Statistics of the Commission Incorporating Therein All Revisions and Disallowances Resulting From the Public Hearing in Docket 15

I. COMPUTATION OF ADJUSTMENTS						
[Following methods in Exhibit Nos. 230 District No. 14 A-1 and A-2]						
	Cost form item	1937 costs				Adjustment
		Tons	Amount	Per ton	Increase (decrease)	
Mines over 50 tons daily:						
Producing and administrative cost:						
Unemployment tax	10 K	1,720,415	\$66,659	\$0.0387		
As shown in C. D. 1		-28,175	-1,065			
Effect of changes resulting from audit, etc.						
Revised as result of audit, etc.		1,692,240	65,594	.0388	1 \$0.0194	
Bituminous Coal Act tax (tax paid on items 1 and 2 coal):	10 I	1,720,415	500	.0003		
As shown in C. D. 1		-28,175				
Effect of changes resulting from audit, etc.						
Revised as result of audit, etc.		1,692,240	500	.0003	1 .0097	
Selling costs on coal sold commercially:	15 I	1,693,904	8,982	.0054	.0291	
Bituminous Coal Act tax (tax paid on item 4 coal):		-28,175	-228			
As shown in C. D. 1						
Effect of changes resulting from audit, etc.						
Revised as result of audit, etc.		1,641,729	8,754	.0054	1 .0054	
Net adjustment—Mines over 50 tons daily					.0227	

TABLE 3.—Adjustments for Federal Unemployment and Bituminous Coal Act Taxes Applied to the Revised Costs, District No. 14-A1C, Commercial and Captive, Year Ending December 1937, as Reported by the Bureau of Research and Statistics of the Commission Incorporating Therein All Revisions and Disallowances Resulting From the Public Hearing in Docket 15—Continued

	Cost form item	1937 costs			Adjustment
		Tons	Amount	Per ton	
Mines under 50 tons daily:					
Producing and administrative cost:					
Unemployment tax (taken at one-half of mines over 50 tons)					
Bituminous Coal Act tax (taken at same as mines over 50 tons)					\$0.0097
					.0043
Net adjustment—mines under 50 tons daily					.0140

1 Increase from 2 to 3 percent for 1938 reflected by one-half of 1937 cost per ton.

2 Increase to reflect full incidence of 1 cent per ton.

3 Eliminated as full incidence is reflected in footnote 2.

II. COMPUTATION OF ADJUSTED COSTS

[Following methods in Exhibit Nos. 230, District No. 14 A-3]

Cost determination using 1936 weights									
Classification	Rec- ord page No.	Mine code No.	Cost form item No.	Net tons	Statistical Bureau data	1937 com- pared with 1936 (2-1)	Adjust- ments to reflect current costs	Adjusted cost using 1936 weights	Per ton
				1936	1937				
Total mines over and under 50 tons daily									
Total producing and administrative cost:									
1. Mines over 50 tons daily				1,879,079	1,692,240	Per ton \$3.3453	Per ton \$0.0291	Per ton \$3.3724	
2. Mines under 50 tons daily				53,704	86,767	2.1928	(-.1531)	2.2668	
3. Total				1,932,783	1,779,007	3.2872	.3868	.0287	3.3400
Selling cost on coal sold commercially:									
4. Mines over 50 tons daily				1,823,013	1,641,729	Per ton \$3.3453	Per ton \$0.0291	Per ton \$3.3724	
5. Mines under 50 tons daily				53,456	86,533	2.1928	(-.1531)	2.2668	
6. Total				1,876,469	1,728,262	3.2872	.3868	.0287	3.3400
Total producing, administrative, and selling costs:									
Mines over 50 tons daily (line 1+line 4)						3.1995	.4553	.0237	3.6790
Mines under 50 tons daily (line 2+line 5)						2.4332	(-.1254)	.0140	2.3218
Total (line 3+line 6)						3.1781	.4365	.0235	3.6411

TABLE 3.—Adjustments for Federal Unemployment and Bituminous Coal Act Taxes Applied to the Revised Costs Incorporating Therein All Revisions and Disallowances Resulting From the Public Hearing in Docket 15—Continued

	Based upon 1935 weights		
	Producing and administrative cost per ton	Selling cost per ton	Total cost per ton
Net changes in adjusted costs caused by the revisions and disallowances resulting from the hearing:			
Before revisions and disallowances (as given in Exhibit No. 200).....	\$3.3563	\$0.3000	\$3.6563
After revisions and disallowances.....	3.3401	.3012	3.6413
Net change, increase or decrease.....	(-.0162)	.0012	(-.0150)

Computation of Adjusted Costs Using 1937 Weights

The foregoing computation of adjusted costs has been made by the standard method adopted for analysis of other districts, weighting the changes in cost for the mines over and under 50 tons daily capacity by the tonnages reported by these mines in 1936. (See Transcript 461-464 and Exhibit 310 for detailed explanation of the method.)

In most districts the use of the 1936 weights is preferable, for reasons specified in Tr. 463. In the case of District No. 14, however, the coverage of the small mines of under 50 tons daily capacity is much more complete in 1937. (Tr. 196.) In this district these small mines have lower per ton costs than the mines over 50 tons, and also show a decrease in per ton cost from 1936 to 1937 rather than an increase. As a result, the use of 1936 weights tends to increase the cost unduly. For this reason the Bureau of Research and Statistics recommends that in District No. 14 the 1937 tonnages be used in computing the adjusted costs. Using these 1937 weights the adjusted costs are as follows:

	Producing and administrative cost per ton	Selling cost per ton	Total cost per ton
Mines over 50 tons daily.....	\$3.3724	\$0.3006	\$3.6730
Mines under 50 tons daily.....	2.2668	.1150	2.3818
Total.....	3.3156	.2970	3.6126

TABLE 5.—District Board's Determination of the Adjusted Costs of the Total Ascertainable Tonnage in District 14 Revised, etc.—Continued.

Item	Total ascertainable tonnage including captive mines
Producing, administrative and selling costs—Continued.	
Deductions resulting from revisions and disallowances on tabulations of Statistical Division:	
For January-December 1937, twelve months—Appendix Table 2a ¹	-\$0.0166

Total producing, administrative and selling cost..... 3.6183

¹ Board based its adjustments of the 1936 costs primarily on the actual costs of the twelve months, January-December, 1937 (the labor costs for January-March being adjusted to the level of the new wage scale effective after April 1937). Hence, any disallowances or revisions in the 1937 costs should be deducted from the Board's determination.

TABLE 6.—Bureau of Research and Statistics' Computation of the Costs of Twelve-Month Period, January-December 1937, in District No. 14, Adjusted for All Factors Operative Since January 1, 1938, for Which Proof Was Supplied in the Record

[Incorporating also all revisions and disallowances resulting from the record]

Item	Total ascertainable tonnage including captive mines ¹
Producing and administrative cost:	
Actual costs January-December 1937, with adjustments for Federal Unemployment and Bituminous Coal Act taxes (incorporating all revisions and disallowances) Appendix Table 3, using 1937 weights.....	\$3.3156
Transfer of Sales Tax from selling schedule to producing and administrative schedule per Table 8.....	+.0012

Adjustments for other factors operative since January 1, 1938, proposed by District Board and established by the record:
Increase in District Board expense² (See Ex. 231 and Tr. 213)..... +.0040

Total producing and administrative..... 3.3208

TABLE 6.—Bureau of Research and Statistics' Computation of the Costs of Twelve-Month Period, January-December 1937, in District No. 14, Adjusted for All Factors Operative Since January 1, 1938, for Which Proof Was Supplied in the Record—Continued

[Incorporating also all revisions and disallowances resulting from the record]

Item	Total ascertainable tonnage including captive mines ¹
Selling costs on coal sold commercially: ³	
Actual costs January-December 1937, with adjustments for Federal Unemployment and Bituminous Coal Act taxes (incorporating all revisions and disallowances) Appendix Table 3, using 1937 weights.....	\$0.2970
Transfer of Sales Tax from selling schedule to producing and administrative schedule per Table 8.....	-.0012
Adjustments for other factors operative since January 1, 1938, proposed by District Board and established by the record.....	none
Total selling cost.....	.2958

Total producing, administrative, and selling cost:

Actual costs January-December, 1937, with adjustments for Federal Unemployment and Bituminous Coal Act taxes (incorporating all revisions and disallowances).....	3.6126
Sales Tax adjustment—net.....	.0000
Total adjustments for other factors operative since January 1, 1938, as itemized above.....	+.0040
Total producing, administrative and selling costs.....	3.6166

¹ No separate determination of the adjusted costs of commercial mines was made in District 14. Figures included also small mines of under 50 tons daily capacity.

² Amount necessary to increase the actual average expenditure for twelve months of 1937 (Exhibit 229 line 10 b) to the 1¢ a ton assessment authorized by the Commission.

³ Tax payable under the Bituminous Coal Act of 1937 is charged to producing and administrative expense rather than to selling expense.

TABLE 7.—Transfer of Sales Taxes From Selling Schedule to Producing and Administrative Schedule Year 1936, District No. 14

Item	Total commercial mines over and under 50 tons daily capacity		Total ascertainable tonnage including captive mines	
	Amount	Per ton	Amount	Per ton
Tons produced, per findings, table 1	1,892,784		1,932,783	
Tons all other sales, per findings, table 1	1,876,469		1,876,469	
Producing and administrative costs, per findings, table 1	\$5,589,953	\$2.9533	\$5,652,362	\$2.9245
Add:				
Sales tax (C.D. 1, item 13 h.) ¹	405		405	
Sales tax (C.D. 1, item 15 a.) ¹				
Total addition	405	.0002	405	.0002
Producing and administrative costs, adjusted	5,590,358	2.9535	5,652,767	2.9247
Selling costs on coal sold commercially, per findings, table 1	475,988	.2537	475,988	.2536
Deduct:				
Sales tax (C.D. 1, item 13 h.) ¹	405	.0002	405	.0002
Selling costs on coal sold commercially, adjusted	475,583	.2535	475,583	.2534
Total cost, producing, administrative and selling, per findings, table 1		3.2070		3.1781
Total cost, producing, administrative and selling, adjusted		3.2070		3.1781

¹ Amounts for commercial mines only taken from C.D. 1-a.

TABLE 8.—Transfer of Sales Taxes From Selling Schedule to Producing and Administrative Schedule January–December 1937, District No. 14

Item	Total commercial mines over and under 50 tons daily capacity		Total ascertainable tonnage including captive mines	
	Amount	Per ton	Amount	Per ton
Tons produced, per findings, table 2-a			1,779,007	
Tons all other sales, per findings, table 2-a			1,728,262	
Producing and administrative costs, per findings, table 2-a			\$5,847,965	\$3.2872
Add:				
Sales tax (C.D. 1, item 15 h.) ¹			2,159	
Sales tax (C.D. 1, item 17 a.) ¹				
Total addition			2,159	.0012
Producing and administrative costs, adjusted			5,850,124	3.2884
Selling costs on coal sold commercially, per findings, table 2-a			522,148	.3021
Deduct:				
Sales tax (C.D. 1, item 15 h.) ¹			2,159	.0012
Selling costs on coal sold commercially, adjusted			519,989	.3009
Total cost, producing, administrative and selling, per findings, table 2-a				3.5893
Total cost, producing, administrative and selling, adjusted				3.5893

¹ Amounts for commercial mines only taken from C.D. 1-a.

MINIMUM PRICE AREA 4

On the basis of the foregoing findings of fact, and after due consideration of all the evidence, the Commission finds the weighted average of the total costs of the ascertainable tonnage produced in Minimum Price Area No. 4 in the calendar year 1936, adjusted to give effect to changes in wage rates, hours of employment or other factors substantially affecting costs, exclusive of seasonal changes, and to reflect as accurately as possible changes which have been established since January 1, 1936, to be \$3.608 per ton.

By the Commission.

[SEAL]

PERCY TETLOW,
Chairman.

Dated this the 25th day of May 1939.

No. 106—5

MINIMUM PRICE AREA NO. 5—DISTRICT NO. 15

Composite tabulations of cost data showing the weighted average of the total costs of the ascertainable tonnage produced in District 15 in the calendar year 1936, were submitted to the District Board for said District by the proper statistical bureau of the Commission. These tabulations included a separate analysis of the costs of strip mines and deep mines of over fifty tons, to which reference will later be made. These tabulations were introduced in evidence as Exhibits 267–272, inclusive, and are identical with the tabulations submitted to the District Board with the exception of Exhibit 269. This last named exhibit includes a retabulation of the costs of mines of less than fifty tons daily capacity, made by

the Bureau of Research and Statistics in the course of an audit of tabulations on June 7, 1938. This retabulation resulted in a net increase amounting to 2.5 mills, an amount so small that the tabulations were not formally resubmitted to the District Board prior to the hearing. Including this change of 2.5 mills, the exhibits show a total producing and administrative cost of \$1.7967 per ton and a selling cost on coal sold commercially of \$0.1329 per ton, the sum of the two being designated as total producing, administrative, and selling cost and amounting to \$1.9296 per ton.

The Bureau of Research and Statistics, as a result of its test audit and its check of out-of-line items queried by the Consumers' Counsel, recommended the revision and disallowance of cost items which, together with similar adjustments from evidence adduced in the record, total \$0.0136 per net ton. Details of these revisions and disallowances are given in full in Appendix Tables 1 and 1a for District No. 15.

Selling costs reported by mine coded as H-O having been shown by the evidence to be an estimated average discount paid to wholesalers, the Commission is of the opinion that said selling costs are unreasonably high. The Commission finds that the selling costs for the years 1936 and 1937, as reported by this producer, should be reduced to the average of the other selling costs for the District.

Mr. W. E. Blucher, secretary of District Board No. 15, testified on behalf of the District Board. This witness since 1916 has been working for coal producing and wholesale companies collectively, but was never employed by an individual company.

District Board No. 15 is composed of operators who are familiar with the costs and are representative of the different types of mining in the district. Upon the receipt of the 1936 cost data from the Statistical Bureau, the District Board made an independent check of the tabulations. The Board found that the totals at first submitted to it without separation of strip and deep mines were insufficient for the purpose of making its determinations, because of the great difference in this district between the costs of stripping and of underground methods. The Board, therefore, requested a separation of the two classes of mines from the Statistical Bureau, and on receipt of them, found the tabulation for each class of mine to properly reflect the costs of that class within the district. The Board, therefore, determined that the tabulations of the Statistical Bureau were correct and proposed them as its own determinations of the weighted average of the total costs of the ascertainable tonnage produced in District No. 15 in 1936. These determinations were introduced into evidence as a part of the Board's Exhibits 290 and 291.

However, since the Commission finds that the weighted average of the costs of selling must be computed by using as a divisor the total ascertainable tonnage

produced in a district, the computations set forth in Tables 1 and 1a for District No. 15 in the appendix, which incorporated all revisions and disallowances resulting from the record as recommended by the Bureau of Research and Statistics and accepted by the district board, should be further adjusted to include in the divisor used in weighting the costs of selling not only coal sold commer-

cially but also all other tonnage produced in the district.

The Commission therefore finds that the weighted average of the total costs of the ascertainable tonnage produced in District 15, the weighted average of the total costs of strip mines over fifty tons daily capacity, and the weighted average of the total costs of deep mines over fifty tons daily capacity, are as follows:

Weighted Average of the Total Costs per Ton in the Calendar Year 1936

TOTAL STRIP MINES OVER 50 TONS DAILY CAPACITY

[Incorporating all revisions and disallowances resulting from the record, including the revision of 2.5 mills resulting from retabulation of mines under 50 tons daily capacity. Sales taxes are here charged to producing and administrative cost rather than to selling cost]

	Tons (1)	Adjusted cost per ton (2)	Amount (3)	Weighted average of total tons produced (4) (3÷1)
Producing and Administrative Cost:				
Tons produced, 1936.....	4,415,594	\$1.4876	\$6,568,757	\$1.4876
Reasonable selling cost:				
Tons sold commercially.....	4,384,185	.1429	626,406	XX
All other coal.....	31,409	0	0	XX
Total.....	4,415,594		626,406	.1419
Total producing, administrative, and selling cost as determined by the Commission.....			7,195,163	1.6295

TOTAL DEEP MINES OVER 50 TONS DAILY CAPACITY

Producing and administrative cost:				
Tons produced, 1936.....	2,101,142	\$2.2898	\$4,811,279	\$2.2898
Reasonable selling cost:				
Tons sold commercially.....	1,650,632	.1156	190,858	XX
All other coal.....	450,510	0	0	XX
Total.....	2,101,142		190,858	.0909
Total producing, administrative, and selling cost as determined by the Commission.....			5,002,137	2.3807

TOTAL ASCERTAINABLE TONNAGE, INCLUDING CAPTIVE MINES

Producing and administrative cost:				
Tons produced, 1936.....	7,030,072	\$1.7891	\$12,577,504	\$1.7891
Reasonable selling cost:				
Tons sold commercially.....	6,537,520	.1269	829,584	XX
All other coal.....	492,552	0	0	XX
Total.....	7,030,072		829,584	.1180
Total producing, administrative, and selling cost as determined by the Commission.....			13,407,088	1.9071

To assist District Board No. 15 in its determination of the adjusted costs, the Bureau of Research and Statistics also tabulated actual costs for the period, April 1-December 31, 1937, the latest period for which cost data were available at the increased rate of wages effective April 1, 1937, for submission to the District Board. Tabulations giving totals for strip and deep mines combined were forwarded under date of April 20, 1938. Shortly thereafter, upon request of the Board, a breakdown between strip and deep mines was supplied. These tabulations were introduced into evidence as Exhibits 273-280. They were transmitted to the Board with the statement that they represented the reports available at the date of tabulation and were subject to change by the addi-

tion of late reports and upon completed review. At a later date the Bureau of Research and Statistics completed its review of the costs of the last nine months of 1937 and prepared final tabulations which were introduced into the record as Exhibits Nos. 281-285.

These tabulations were likewise subjected to the test audit of the Bureau of Research and Statistics and to examination for possible extension into 1937 of the out-of-line items queried for 1936 by the Consumers' Counsel. As a result, certain revisions and disallowances were recommended by the Bureau of Research and Statistics and approved and accepted by the District Board. Details regarding the 1937 revisions and disallowances together with similar evidence adduced at the hearings are given in

full in Appendix Tables 2 and 2a for District No. 15.

Particular attention was given by the Bureau of Research and Statistics to testing the representativeness of the cost record for the nine months of 1937 in this district. The completed review of the nine-month costs (Exhibits 281-285) resulted in an increase over the preliminary tabulations for the same period (Exhibits 273-280) of \$0.0765 in the indicated cost per ton. This relatively large increase was found to be due partly to the addition in the final tabulation of late reports from higher cost underground mines, but chiefly to the inclusion of idle-month charges which had been omitted in the preliminary tabulations. Such idle-month charges, as has been previously stated, were admitted only when the mine in question was contributing actively to the supply of coal at some time during the year. In District 15, however, it was found that the idle-month charges were concentrated in the months of April and May. These months, we find, were abnormal in that the usual summer decline was intensified in 1937 by idle time associated with renewal of the wage agreement which expired March 31, and inclusion of these abnormal months would tend to make the costs unduly high. The District Board agreed that the inclusion of the abnormal idle-month charges in April-May would unduly increase the costs.

That the nine-month average for 1937 is not representative of costs for the full year under the new wage scale is further indicated by Exhibit 286, which compares the rate of production of January-March 1938 with that of April-December 1937. This exhibit shows that the average monthly production for the first quarter of 1938 was 14.9 per cent greater than the average for the last nine months of 1937. The comparison proved beyond doubt that as far as the factor of tonnage is concerned, the average costs of production in the nine months of 1937 would be higher than the average for the entire coal year, including the first quarter of 1938. If, however, the abnormal months of April-May are excluded, the average monthly rate for the seven-months' period June to December 1937 is found to be almost identical with that for the first quarter of 1938. In the opinion of the Bureau of Research and Statistics the seven-month costs for June-December would be representative of the total costs for the whole coal year 1937-38, exclusive of the abnormal months of April and May. It accordingly calculated the average seven-month costs for each one of the classifications of mines covered by Exhibits 281-285 inclusive, and included them in the final columns of these exhibits.

It was also necessary to test the 1937 cost data as to the relative proportions of strip and deep mines covered by the compilations. In District No. 15 there

is a large difference averaging 60 to 70 cents per ton between the costs of the strip mines as a group and the underground mines as a group. It is obvious that any average for both groups of mines will be much affected by the relative proportion of the two which are included. As most of the strip coal comes from large producers maintaining adequate accounting departments, the cost reports from strip mines are received promptly, but it is difficult to get reports from the smaller underground mines. Hence, the Bureau took precautions against the possibility of statistical bias in the cost tabulations which might arise through adequate coverage of the low-cost strip mines and incomplete coverage of the higher-cost deep mines. In the tabulations for 1936 the coverage for the two classes of mines was properly balanced. In the tabulations for 1937, as introduced in Exhibit 281, there was a relatively more complete coverage of the strip mines than of the underground mines, so that the average of the reports received for 1937 was unduly affected by the low costs of the strip mines and did not faithfully reflect the weighted average cost of all coal produced in the district. Independent evidence supplied by the State mine inspectors of Kansas, Missouri, and Oklahoma, summarized in Exhibit No. 287, shows that there was no significant change in the relative proportions of strip and underground coal in District 15 from 1936 to 1937. The strip and the deep mines were therefore given the same relative importance in 1937 as in 1936. A summary statement showing the results thus obtained was introduced in the record as Exhibit No. 288 entitled "Computation of weighted average costs in District No. 15 in the seven-month period June-December 1937, assuming the same proportions of strip and deep-mined coal which were reported in 1936."

As a further aid to the determination of the adjusted costs, the Bureau of Research and Statistics also computed adjustments for two factors not fully reflected in the seven-month costs for the year 1937; namely, the Federal Unemployment tax and the full incidence of the tax under the Bituminous Coal Act. These adjustments are determined separately for strip and underground mines of over 50 tons daily capacity and for the total ascertainable tonnage. The computation of the actual seven-months' cost for June-December 1937, as adjusted, and incorporating also all revisions and disallowances, gives the following result: (Details in Appendix, Tables Nos. 3, 4, and 6, District No. 15. Such adjustments as may be necessary to provide for the inclusion of tonnage other than coal sold commercially in the weighting of the cost of selling appear in subsequent findings herein.)

Bureau of Research and Statistics' Computation of the Actual Costs of June-December 1937 in District No. 15, Adjusted for Federal Unemployment Tax and Bituminous Coal Act Tax

[Incorporating all revisions and disallowances resulting from the record. See Appendix Table 6 for District No. 15]

	Total strip mines over 50 tons daily capacity	Total deep mines over 50 tons daily capacity	Total ascertainable tonnage including mines under 50 tons
1. Producing and administrative cost ¹	\$1.6162	\$2.4143	\$1.9128
2. Selling costs per ton on coal sold commercially ¹1511	.1254	.1348

¹ Sales taxes and the tax payable under the Bituminous Coal Act are here charged to producing and administrative cost rather than to selling cost.

District Board No. 15, in making its determination of the adjusted costs, had before it data from the Statistical Bureau on costs in the calendar year 1936, data from code members producing 82.54 percent of the district tonnage on the increase in their costs since 1936 (Exhibit 290), and the preliminary data from the Statistical Bureau covering the costs of April-December 1937 (Exhibits 273-280). The last-named figures, though including mines active in April and May, include no charges on mines entirely idle in those months. The Board found it necessary to adjust separately the costs of strip mines, deep mines, and small mines under 50 tons. It accepted the Commission's data for 1936, so broken down, as correct and made its adjustments by increasing or decreasing the 1936 figures to take care of any subsequent change that had taken place. It was the judgment of the Board that no change had occurred in the relative tonnage of deep and strip mines in the district (Exhibit 291), a conclusion which is confirmed by the independent evidence of the State mine departments (Exhibit No. 287). The Board's determination of the weighted average of the total costs of the ascertainable tonnage produced in District No. 15, as adjusted, was \$2.0481 (Exhibit 291). This figure required some adjustment to properly reflect the increase in the Federal Unemployment tax and the revisions and disallowances recommended by the Bureau of Research and Statistics as a result of its test audit and its check of out-of-line items. With modifications for these factors, the Board's determinations of the adjusted costs of strip and deep mines over 50 tons daily capacity and of the total ascertainable tonnage including the small mines under 50 tons are shown below. The figures represent the weighted average of the total costs in the calendar year 1936, so adjusted. (Details are given in Appendix Table 5, for District No. 15.)

Such adjustments as may be necessary to provide for the inclusion of tonnage other than coal sold commercially in the weighting of the cost of selling appear in subsequent findings herein.)

District Board's Determination of the Adjusted Costs of the Total Ascertainable Tonnage in District No. 15

[Incorporating all revisions and disallowances resulting from the record. See Appendix Table 5 for District No. 15]

	Total strip mines over 50 tons daily capacity	Total deep mines over 50 tons daily capacity	Total ascertainable tonnage including mines under 50 tons daily capacity
1. Producing and administrative cost ¹	\$1.6156	\$2.4274	\$1.9102
2. Selling costs per ton on coal sold commercially ¹1482	.1447	.1387

¹ Sales tax and the tax payable under the Bituminous Coal Act are here charged to producing and administrative expense rather than to selling cost.

The Board's determination is thus substantially identical with the independent computation of the Bureau of Research and Statistics, which amounts to \$2.0476, although the two were derived by different methods. The District Board did not have before it the Commission's completed review of the 1937 costs, introduced as Exhibits 281-285. The figures selected by the Board from inspection of the preliminary data in the light of its expert knowledge were in fact very close to those finally developed by the Bureau of Research and Statistics. The detailed studies of the Bureau, giving due consideration to idle-month charges, eliminating the abnormal months of April-May, and testing the proportions of strip and underground coal, yield a result which checks within a few mills per ton the conclusions previously arrived at by the District Board.

Since the two sets of computations confirm each other, the Commission finds that the determinations of the District Board are an accurate reflection of the adjusted costs in District No. 15.

On the question of reasonable selling costs for District No. 15, a witness for the District Board testified that he has had knowledge of selling costs within District 15 for many years, and that from time to time he has made comparative figures for various producers and wholesalers. He expressed the opinion that a selling cost of \$.1512 is a reasonable selling cost. This figure is the District Board's original computation of the average selling cost as shown in Exhibit 291 and includes \$.0068 per ton in taxes levied under the Coal Act

(Appendix Table 5). Transferring the Coal Act tax and sales taxes from selling to producing-administrative expense, and incorporating all revisions and disallowances resulting from the record, the Board's determination of average selling cost is reduced to \$.1387 per ton. After transferring the Coal Act tax and sales taxes, and incorporating all revisions and disallowances resulting from the record, the independent determination of the Bureau shows a selling cost on commercial coal of \$.1348 per ton which is almost identical with the District Board's determination as adjusted and which affords statistical confirmation of the Board's determination.

The Commission is of the opinion that actual records of costs incurred in the selling of coal sold commercially constitute the best evidence available of the reasonable selling costs of such coal. The Commission also finds from the evidence in the record that such actual records of selling costs incurred in the selling of coal sold commercially are reasonable selling costs.

The Commission therefore finds that the reasonable costs for coal sold commercially in District 15 is \$.0.1387 per ton.

The adjusted costs of the ascertainable tonnage produced in District 15 are as follows:

District Board's Determination of the Adjusted Costs of All Ascertainable Tonnage in District No. 15

[Revised to incorporate all changes and disallowances resulting from the record (see Appendix Table 5) and further adjusted to reflect the inclusion in the divisor for selling costs of the total tonnage produced in the district]

	Tons (1)	Adjusted cost per ton (2)	Amount (3)	Weighted average of total tons produced (4) (3÷1)
Producing and administrative cost:				
Tons produced, 1936.....	7,030,072	\$1.9102	\$13,428,844	\$1.9102
Reasonable selling cost:				
Tons sold commercially.....	6,537,520	.1387	906,754	0
All other coal.....	492,552	0	0	0
Total.....	7,030,072		906,754	.1290
Total producing, administrative, and selling cost as determined by the Commission.....			14,335,598	2.0392

The Commission, therefore, finds that the weighted average of the total costs of the ascertainable tonnage produced in District No. 15 in the calendar year 1936, as adjusted, is \$2.0392.

DISTRICT NO. 15—APPENDIX

Table 1.—Producing and administrative costs and selling costs in District No. 15 for the year 1936 as reported by the Bureau of Research and Statistics of the Commission incorporating all revisions and disallowances resulting from the record in the public hearing in Docket No. 15.

Table 1a.—Producing and administrative costs and selling costs in District No. 15 for the year 1936 as reported by the Bureau of Research and Statistics of the Commission incorporating all revisions and disallowances resulting from the record in the public hearing in Docket No. 15. (Strip and deep mines.)

Table 2.—Producing and administrative costs and selling costs in District No. 15 for the nine months' period, April-December 1937 as reported by the Bureau of Research and Statistics of the Commission incorporating all revisions and disallowances resulting from the record in the public hearing in Docket No. 15, April-December 1937.

Table 2a.—Producing and administrative costs and selling costs in District No. 15 for the seven months' period, June-

TABLE 1.—Producing and Administrative Costs and Selling Costs in District No. 15 for the Year 1936 as Reported by the Bureau of Research and Statistics of the Commission Incorporating All Revisions and Disallowances Resulting From the Record in the Public Hearing in Docket No. 15

Classification	Record page No.	Mine code No.	Cost form item No.	Producing and administrative costs			Selling costs on coal sold commercially			Total cost, producing, administrative and selling
				Tons	Amount	Per ton	Tons	Amount	Per ton	
Total commercial and captive, over 50 tons:										
Original totals, C. D. 15-1, Exhibit 267.....	304			6,536,711	\$11,469,235	\$1.7546	6,055,056	\$858,967	\$1.4149	\$1.8963
Net change from test audit of June 3.....	307				-11,161		-264	-15,728		
Items queried by Consumers Counsel and disallowed (all such items related to commercial mines).....										
310 Q-K 18 g.....					-2,344					
H-O 7 a.....					-4,856					
D-K 18 g.....					-11,187					
18 g.....					-55					
C-K 10 f.....					-733					
311 U-M 6 c.....					-922					
312 H-M 20.....					-2,415					
I-C-M 10 c.....					-451					
H-O 14.....								-20,920		
Development disallowance.....	309				-19,975	-56,743		-19,975	-3,387	
Net revisions.....					-19,975	-90,867		-20,239	-40,035	
Revised total.....				6,516,736	11,378,368	1.7460	6,034,817	818,932	.1357	1.8817
Mines under 50 tons:										
Original totals, C. D. 15-2, Exhibit 269.....	305			513,336	1,197,468	2.3327	502,703	12,320	.0245	2.3572
Net change from test audit of June 3.....										
Items queried by Consumers Counsel and disallowed.....										

December 1937 as reported by the Bureau of Research and Statistics of the Commission incorporating all revisions and disallowances resulting from the record in the public hearing in Docket No. 15. (June-December, 1937, Strip and deep mines.)

Table 3.—Adjustments for Federal Unemployment and Bituminous Coal Act Taxes applied to the revised costs incorporating therein all revisions and disallowances resulting from the public hearing in Docket No. 15. (Commercial and captive, 7 months, June-December 1937.)

Table 4.—No Table 4 was prepared for this district.

Table 5.—District Board's determination of the adjusted costs of strip and deep mines of over 50 tons daily capacity and of the total ascertainable tonnage in District No. 15 revised to incorporate all changes and disallowances resulting from the record in the public hearing in Docket No. 15.

Table 6.—Bureau of Research and Statistics' computation of the actual costs of June-December, 1937, in District No. 15, adjusted for all factors operative since January 1, 1938, for which proof was supplied in the record.

Table 7.—Transfer of Sales Taxes from Selling Schedule to Producing and Administrative Schedule, Year 1936.

Table 8.—Transfer of Sales Taxes from Selling Schedule to Producing and Administrative Schedule, June-December 1937.

TABLE 1a.—Producing and Administrative Costs and Selling Costs in District No. 15 for the Year 1936, Strip and Deep Mines, as Reported by the Bureau of Research and Statistics of the Commission Incorporating All Revisions and Disallowances Resulting From the Record in the Public Hearing in Docket No. 15

Classification	Rec- ord page No.	Mine code No.	Producing and administrative costs			Selling costs on coal sold commercially			Total cost, pro- duc- ing, ad- min- is- tra- tive and selling
			Tons	Amount	Per ton	Tons	Amount	Per ton	
Mines under 50 tons—Con.									
Net revisions									
Revised total			513,336	\$1,197,408	\$2.3327	502,703	\$12,320	\$0.0245	\$2.3572
Total ascertainable tonnage:									
Original totals, C.D. 15-3,									
Exhibit 269	305		7,040,047	12,666,703	1.7967	6,557,759	871,287	.1329	1.9296
Net revisions			-19,975	-90,867		-20,259	-40,035		
Revised total			7,020,072	12,575,836	1.7889	6,537,520	831,252	.1271	1.9169
Commercial—over 50 tons:									
Original totals, C.D. 15-1a,									
Exhibit 268	305		5,972,353	10,256,880	1.7174	5,916,920	830,583	.1419	1.8593
Net change from test audit				-11,101		-264	-15,728		
Items queried by consumers counsel and disallowed				-22,983			-20,920		
Development disallowance				-19,975			-3,387		
Net revisions	30	B-K	-19,975	-56,743		-19,975	-40,035		
Revised total			5,952,378	10,190,013	1.7079	5,896,690	799,548	.1356	1.8435
Total commercial—over and under 50 tons:									
Original totals, C.D. 15-1a									
+15-2, Exhibits 268 and 269			6,485,699	11,454,348	1.7661	6,419,622	831,903	.1327	1.8888
Net revisions			-19,975	-90,867		-20,259	-40,035		
Revised total			6,465,724	\$11,363,481	\$1.7575	6,399,363	\$811,868	\$.1299	\$1.8844
Captive mines—over 50 tons:									
Original totals, C.D., Ex-									
hibit 267									
Net change from test audit									
Items queried by consumers counsel and disallowed									
Net revisions									
Revised total									
Development disallow-									
ance	309	B-K	-19,975	-56,743			-3,387		
Net revisions			-19,975	-71,407		-19,975	-24,307		
Revised total			2,101,142	4,809,970	2.2892	1,650,632	192,167	.1164	2.4056
Total strip and deep mines—over 50 tons:									
Original totals—C.D.,									
Exhibit 267	304		6,536,711	11,469,235	1.7546	6,055,056	838,967	.1419	1.8965
Net revisions			-19,975	-90,867		-20,259	-40,035		
Revised total			6,516,736	11,378,368	1.7460	6,034,817	818,932	.1357	1.8817

NOTE.—See footnotes at end of table.

¹ Same as for "total commercial and captive, over 50 tons."

² No exhibit.

TABLE 1a.—Producing and Administrative Costs and Selling Costs in District No. 15 for the Year 1936, Strip and Deep Mines, as Reported by the Bureau of Research and Statistics of the Commission Incorporating All Revisions and Disallowances Resulting From the Record in the Public Hearing in Docket No. 15—Continued

Classification	Rec-ord page No.	Mine code No.	Cost form item No.	Producing and administrative costs		Selling costs on coal sold commercially		Total cost, producing, administrative and selling
				Tons	Per ton	Tons	Per ton	
Mines under 50 tons:								
Original totals—C.D.	305			513,336	\$1,197,468	\$2,3327	\$12,320	\$2,3572
15-2—Exhibit 289								
Net change from test								
audit of June 3								
Items queried by consumers counsel and disallowed								
Net revisions				513,336	1,197,468	2,3327	12,320	2,3572
Total ascertainable tonnage								
Original totals—C.D.	305			7,050,047	12,666,703	1,7067	6,537,759	1,9296
15-3—Exhibit 289								
Net change from test								
audit of June 3								
Items queried by consumers counsel and disallowed								
Net revisions				7,050,047	12,666,703	1,7067	6,537,759	1,9296
Total commercial—over and under 50 tons:								
Original totals—C.D.—Exhibit				7,030,072	12,575,836	1,7889	6,537,520	1,9160
Net change from test								
audit of June 3								
Items queried by consumers counsel and disallowed								
Net revisions				7,030,072	12,575,836	1,7889	6,537,520	1,9160
Revised total								
Captive mines—over 50 tons:								
Original totals, C.D.—Exhibit								
Net change from test								
audit of June 3								
Items queried by consumers counsel and disallowed								
Net revisions								
Revised total								
Total ascertainable tonnage								
Original totals—C.D. 15-3—Exhibit 289	315			319,879	775,671	2,4249	313,286	2,4495
Net change from test								
audit of June 3								
Items queried by consumers counsel and disallowed								
Net revisions				319,879	775,671	2,4249	313,286	2,4495
Revised total								
Total ascertainable tonnage								
Original totals—C.D. 15-3—Exhibit 289	315			4,594,105	8,569,089	1,8943	4,259,083	1,8300
Net change from test								
audit of June 3								
Items queried by consumers counsel and disallowed								
Net revisions				4,594,105	8,569,089	1,8943	4,259,083	1,8300
Revised total								
Commercial—over 50 tons:								
Original totals—C.D. 15-3—Exhibit 289	314			3,908,155	7,077,625	1,8110	3,866,708	1,6338
Net change from test								
audit of June 3								
Items queried by consumers counsel and disallowed								
Net revisions				3,908,155	7,077,625	1,8110	3,866,708	1,6338
Revised total								
Total commercial—over and under 50 tons:								
Original totals—C.D. 15-3a + 15-2—Exhibits 282 and 285				4,228,034	7,853,296	1,8574	4,179,994	1,6333
Net change from test								
audit of June 3								
Items queried by consumers counsel and disallowed								
Net revisions				4,228,034	7,853,296	1,8574	4,179,994	1,6333
Revised total								
Captive mines—over 50 tons:								
Original totals, C.D.—Exhibit				4,230,291	\$7,842,827	\$1,8540	4,180,251	\$615,504
Net change from test								
audit of June 3								
Items queried by consumers counsel and disallowed								
Net revisions				4,230,291	\$7,842,827	\$1,8540	4,180,251	\$615,504
Revised total								

1 No exhibit.

TABLE 2.—Producing and Administrative Costs and Selling Costs in District No. 15 for the 9 Months' Period, April–December 1937, as Reported by the Bureau of Research and Statistics of the Commission Incorporating All Revisions and Disallowances Resulting From the Record in the Public Hearing in Docket No. 15

Classification	Rec-ord page No.	Mine code No.	Cost form item No.	Producing and administrative costs		Selling costs on coal sold commercially		Total cost, producing, administrative and selling
				Tons	Per ton	Tons	Per ton	
Total commercial and captive, over 50 tons:								
Original totals—C.D. 15-1—Exhibit 281	314			4,204,226	\$7,794,318	\$1,8539	3,945,797	\$948,922
Net change from test								
audit of June 3								
Items queried by consumers counsel and disallowed								
Net revisions	316			+2,257	—117	+257	—10	—
Revised total								

NOTE.—See footnotes at end of table.

TABLE 2.—Producing and Administrative Costs and Selling Costs in District No. 15 for the 9 Months' Period, April-December 1937, as Reported by the Bureau of Research and Statistics of the Commission Incorporating All Revisions and Disallowances Resulting From the Record in the Public Hearing in Docket No. 15—Continued

Classification	Record page No.	Mine code No.	Cost form item No.	Producing and administrative costs		Selling costs on coal sold commercially		Total cost, producing, administrative and selling
				Tons	Per ton	Tons	Per ton	
Captive mines—over 50 tons—Continued.								
Net change from test audit of June 3.					(?)			
Items queried by consumers Counsel and disallowed.								
Net revisions.								
Revised total.								

¹ Same as for "Total Commercial and Captive, Over 50 Tons."

² No exhibit.

TABLE 2a.—Producing and Administrative Costs and Selling Costs in District No. 15 for the 7 Months' Period, June-December 1937, Strip and Deep Mines, as Reported by the Bureau of Research and Statistics of the Commission, Incorporating All Revisions and Disallowances Resulting From the Public Hearing in Docket No. 15

Classification	Record page No.	Mine code No.	Cost form item No.	Producing and administrative costs		Selling costs on coal sold commercially		Total cost, producing, administrative and selling
				Tons	Per ton	Tons	Per ton	
Total strip mines, over 50 tons:								
Original totals—C. D.	314			2,815,543	\$4,519,037 \$1.6033	2,791,551	\$451,591 \$0.1618	\$1,7651
Net change from test audit of June 3.				+2,257		+257		
Items queried by consumers Counsel and disallowed (all such items related to commercial mines).								
Net revisions.	310	Q-K	13 g		-2,259			
		D-K	13 f		-3,906			
		S-K	15 k		-1,913			
					-3,402			
				1 +2,257	1 -6,145	1 +257	1 -5,365	
Revised total.				2,820,800	4,512,892	2,791,808	446,226	1,7597

¹ All revisions and disallowances incorporated in this table represent the seven months' portion of the revision and disallowances pertaining to 1937 cost data.

² No exhibit.

TABLE 2a.—Producing and Administrative Costs and Selling Costs in District No. 15 for the 7 Months' Period, June-December 1937, Strip and Deep Mines, as Reported by the Bureau of Research and Statistics of the Commission, Incorporating All Revisions and Disallowances Resulting From the Public Hearing in Docket No. 15—Continued

Classification	Record page No.	Mine code No.	Cost form item No.	Producing and administrative costs		Selling costs on coal sold commercially		Total cost, producing, administrative and selling
				Tons	Per ton	Tons	Per ton	
Total deep mines, over 50 tons:								
Original totals—C. D.	314			948,484	\$2,264,515 \$2.375	731,780	\$116,939 \$0.1598	\$2,5473
Net change from test audit of June 3.				-117				
Items queried by consumers Counsel and disallowed.	310	H-O	7a & 16		-993			
					-1,112			
Net revisions.								
Revised total.				948,484	2,263,403	731,780	99,018	2,5216
Total strip and deep mines, over 50 tons:								
Original totals—C. D.	314			3,767,027	6,783,552	3,523,331	598,530	1,9622
Net change from test audit of June 3.				+2,257	-7,257	+257	-23,286	
Items queried by consumers Counsel and disallowed.								
Net revisions.				3,769,284	6,776,295	3,523,588	545,244	1,9525
Revised total.								
Mines under 50 tons:								
Original totals—C. D.	315			280,182	694,493	283,325	6,515	2,4246
Net change from test audit of June 3.								
Items queried by consumers Counsel and disallowed.								
Net revisions.								
Revised total.				280,182	694,493	283,325	6,515	2,4246
Total ascertainable tonnage:								
Original totals—C. D.	315			4,050,209	7,478,045	3,806,656	575,045	1,9947
Net change from test audit of June 3.				+2,257	-7,257	+257	-23,286	
Items queried by consumers Counsel and disallowed.								
Net revisions.				4,052,466	7,470,788	3,806,913	551,759	1,9837
Revised total.								
Captive mines, over 50 tons:								
Original totals—C. D.								
Net change from test audit of June 3.					(?)			
Items queried by consumers Counsel and disallowed.								
Net revisions.								
Revised total.								

¹ All revisions and disallowances incorporated in this table represent the seven months' portion of the revision and disallowances pertaining to 1937 cost data.

² No exhibit.

TABLE 3.—Adjustments for Federal Unemployment and Bituminous Coal Act Taxes Applied to the Revised Costs, District No. 15-A-1C, Commercial and Captive, 7 Months, June-December 1937, as Reported by the Bureau of Research and Statistics of the Commission, Incorporating Therein All Revisions and Disallowances Resulting From the Public Hearing in Docket 15—Continued

II. COMPUTATION OF ADJUSTED COSTS

[Following methods in Exhibit No. 289, District No. 15 A-3]

	Net tons	Cost determination				
		Statistical bureau data		1937, compared with 1936 (2-1)	Adjustments to reflect current costs	Adjusted cost
		Year 1936	7 months 1937			
Total mines over and under 50 tons daily	1936	(1)	(2)	(3)	(4)	(5)
Total producing and administrative cost:		Per ton	Per ton	Per ton	Per ton	Per ton
Deep mines	2,101,142	\$2,292	\$2,353	\$0.061	\$0.024	\$2.417
Strip mines	4,415,894	1.437	1.599	.1124	.0158	1.6157
1. Mines over 50 tons daily	3,769,284	1.746	1.835	.1075	.0192	1.8727
2. Mines under 50 tons daily	6,516,736	2.337	2.401	.0689	.0102	2.4118
3. Total	7,030,072	1.789	1.896	.1047	.0155	1.9121
Selling cost on coal sold commercially:						
Deep mines	1,650,832	.1164	.1353	.0189	(.0079)	.1274
Strip mines	4,384,185	.1430	.1698	.0168	(.0082)	.1516
4. Mines over 50 tons daily	6,034,817	.1337	.1531	.0174	(.0081)	.1456
5. Mines under 50 tons daily	602,703	.0245	.0230	(.0015)		.0230
6. Total	6,637,520	.1271	.1431	.0160	(.0075)	.1356
Total producing, administrative and selling costs:						
Deep mines	2,406	2.406	2.521	.1160	.0155	2.5401
Strip mines	1,635	1.635	1.797	.1292	.0076	1.7673
Mines over 50 tons daily (line 1 + line 4)	1,8817	2.0055	2.0055	.1249	.0111	2.0177
Mines under 50 tons daily (line 2 + line 5)	2,3572	2.4246	2.4246	.0574	.0102	2.4348
Total (line 3 + line 6)	1,9160	2.0367	2.0367	.1207	.0110	2.0477

NOTE.—The composite average cost for 1937 is computed by weighting the strip mine cost and deep mine cost for 1937 by the tonnages of deep mines and strip mines for 1936.

	Producing and administrative cost per ton	Selling cost per ton	Total cost per ton
Net changes in adjusted costs caused by the revisions and disallowances resulting from the Hearing:			
Before revisions and disallowances (as given in Exhibit No. 289)	\$1.9159	\$.1432	\$2.0591
After revisions and disallowances	1.9121	.1356	2.0477
Net change—Increase or (decrease)	(.0038)	(.0076)	(.0114)

TABLE 3.—Adjustments for Federal Unemployment and Bituminous Coal Act Taxes Applied to the Revised Costs, District No. 15-A-1C, Commercial and Captive, 7 Months, June-December 1937, as Reported by the Bureau of Research and Statistics of the Commission, Incorporating Therein All Revisions and Disallowances Resulting From the Public Hearing in Docket 15

I. COMPUTATION OF ADJUSTMENTS

[Following methods in Exhibit No. 289, District No. 15 A-1 and A-2]

Cost form item	1937 costs		Adjustment increase (decrease)
	Tons	Per ton	
Mines over 50 tons daily:			
Producing and administrative cost:			
As shown in C. D. 15	948,484	\$0.0331	
Effect of changes resulting from audit, etc.			
Revised as result of audit, etc.			\$0.0166
Bituminous Coal Act tax (tax paid on items 1 and 2 coal):			
As shown in C. D. 15	948,484	.0002	
Effect of changes resulting from audit, etc.			
Revised as result of audit, etc.			.0008
Selling costs on coal sold commercially:			
Bituminous Coal Act tax (tax paid on item 4 coal):			
As shown in C. D. 15	731,780	.0079	
Effect of changes resulting from audit, etc.			
Revised as result of audit, etc.			.0294
Net adjustment—Mines over 50 tons daily			.0185
Mines under 50 tons daily:			
Producing and administrative cost:			
Unemployment tax (taken at 1/4 of mines over 50 tons)			
Bituminous Coal Act tax (taken at same as mines over 50 tons)			
Net adjustment—Mines under 50 tons daily			.0019
			.0102

¹ Increase from 2 to 3 percent for 1938 reflected by 1/4 of 1937 cost per ton.

² Increase to reflect full incidence of 1 cent per ton.

³ Eliminated as full incidence is reflected in (b).

TABLE 3.—Adjustments for Federal Unemployment and Bituminous Coal Act Taxes Applied to the Revised Costs, District No. 15—A1C, Commercial and Captive, 7 Months, June–December 1937, as Reported by the Bureau of Research and Statistics of the Commission, Incorporating Therein All Revisions and Disallowances Resulting From the Public Hearing in Docket 15—Continued

I. COMPUTATION OF ADJUSTMENTS

[Following methods in Exhibit No. 289, District No. 15 A-1 and A-2]

	Cost form item	1937 costs—strip			Adjustment increase (decrease)
		Tons	Amount	Per ton	
Mines over 50 tons daily:					
Producing and administrative cost:					
Unemployment tax.....	10 k				
As shown in C. D. 1c.....		2,818,543	\$33,584	\$0.0119	
Effect of changes resulting from audit, etc.....		+2,257			
Revised as result of audit, etc.....		2,820,800	33,584	.0119	¹ \$0.0060
Bituminous Coal Act tax.....	10 l				
(Tax paid on items 1 and 2 coal):					
As shown in C. D. 1c.....		2,818,543	452	.0002	
Effect of changes resulting from audit, etc.....		+2,257			
Revised as result of audit, etc.....		2,820,800	452	.0002	¹ .0098 .0158
Selling costs on coal sold commercially:					
Bituminous Coal Act tax.....	15 i				
(Tax paid on item 4 coal):					
As shown in C. D. 1c.....		2,791,551	22,977	.0082	
Effect of changes resulting from audit, etc.....		+257			
Revised as result of audit, etc.....		2,791,808	22,977	.0082	² (.0082)
Net adjustment—Mines over 50 tons daily.....					.0076
Mines under 50 tons daily:					
Producing and administrative cost:					
Unemployment tax (taken at one-half of mines over 50 tons).....					
Bituminous Coal Act tax (taken at same as mines over 50 tons).....					
Net adjustment—mines under 50 tons daily.....					

¹ Increase from 2% to 3% for 1938 reflected by one-half of 1937 cost per ton.² Increase to reflect full incidence of 1 cent per ton.³ Eliminated as full incidence is reflected in (b).

NOTE.—This table is submitted only to show adjustments for Federal Unemployment Tax and Bituminous Coal Act tax necessary for strip mines. All pertinent data entered on preceding table combining deep and strip mines. Adjustment for mines under 50 tons daily based on deep mine adjustments.

II. COMPUTATION OF ADJUSTED COSTS

[Following methods in Exhibit Nos. —, District No. —, A-3]

	Net tons		Cost determination				
	1936	Nine months 1937	Statistical bureau data		1937 compared with 1936 (2-1)	Adjustments to reflect current costs	Adjusted cost
			Year 1936	9 months 1937			
			(1)	(2)	(3)	(4)	(5)
Total mines over and under 50 tons daily							
Total producing and administrative cost:			Per ton	Per ton	Per ton	Per ton	Per ton
1. Mines over 50 tons daily.....							
2. Mines under 50 tons daily.....							
3. Total.....							
Selling cost on coal sold commercially:							
4. Mines over 50 tons daily.....							
5. Mines under 50 tons daily.....							
6. Total.....							
Total producing, administrative and selling costs:							
Mines over 50 tons daily (line 1+ line 4).....							
Mines under 50 tons daily (line 2+ line 5).....							
Total (line 3 + line 6).....							
Net changes in adjusted costs caused by the revisions and disallowances resulting from the hearing:					Producing and administrative cost per ton	Selling cost per ton	Total cost per ton
Before revisions and disallowances (as given in Exhibit No. —).....							
After revisions and disallowances.....							
Net change—Increase or (decrease).....							

TABLE 5.—District Board's Determination of the Adjusted Costs of Strip and Deep Mines of Over 50 Tons Daily Capacity and of the Total Ascertainable Tonnage in District No. 15 Revised to Incorporate All Changes and Disallowances Resulting From the Record in the Public Hearing in Docket No. 15

Item	Total strip mines over 50 tons daily capacity	Total deep mines over 50 tons daily capacity	Total ascertainable tonnage including mines under 50 tons daily capacity ¹
Producing and administrative costs:			
District Board's determination as presented in record. Exhibit No. 291.....	\$1.6040	\$2.4125	\$1.8969
Transfer of Sales Tax from selling schedule to producing and administrative schedule per Table 7.....	+ .0001	+ .0006	+ .0002
Deductions resulting from revisions and disallowances on tabulations of Statistical Division:			
For 1936, Appendix Table 1a ²	— .0044	— .0121	— .0078
Additions resulting from retabulation of mines under 50 tons daily capacity in audit of tabulations of June 7, 1938, not submitted to District Board prior to hearing (Exhibit 269, Tr. 308). ³			+ .0022
Additions of any items overlooked by the Board which were fully proved in the record:			
Increase in Federal Unemployment tax.....	+ .0060	+ .0166	+ .0094
Transfer of Coal Act tax from selling schedule to producing and administrative schedule, plus adjustment to reflect full incidence of tax.....	+ .0099	+ .0098	+ .0093
Total producing and administrative.....	1.6156	2.4274	1.9102
Selling costs on coal sold commercially:			
District Board's determination as presented in record. Exhibit No. 291.....	.1592	.1661	.1512
Transfer of Sales Tax from selling schedule to producing and administrative schedule per Table 7.....	— .0001	— .0008	— .0002
Deductions resulting from revisions and disallowances on tabulations of Statistical Divisions:			
For 1936, Appendix Table 1a ²	— .0035	— .0132	— .0058
Addition resulting from retabulation of mines under 50 tons daily capacity, in audit of tabulations of June 7, 1938, not submitted to District Board prior to hearing (Exhibit 269, Tr. 308). ³			+ .0003
Transfer of Coal Act Tax from selling schedule to producing and administrative schedule.....	— .0074	— .0074	— .0068
Total selling cost.....	.1482	.1447	.1387
Total producing, administrative, and selling costs:			
District Board's determination as presented in record. Ex. No. 295.....	1.7632	2.5786	2.0481
Sales Tax adjustment—net.....	.0000	— .0002	.0000
Net deductions or additions resulting from			

NOTE.—See footnotes at end of table.

TABLE 5.—District Board's Determination of the Adjusted Costs of Strip and Deep Mines of Over 50 Tons Daily Capacity and of the Total Ascertainable Tonnage in District No. 15 Revised to Incorporate All Changes and Disallowances Resulting From the Record in the Public Hearing on Docket No. 15—Continued

Item	Total strip mines over 50 tons daily capacity	Total deep mines over 50 tons daily capacity	Total ascertainable tonnage including mines under 50 tons daily capacity
record, as indicated by items above.....	+\$.0006	-\$.0063	+\$.0008
Total producing, administrative and selling costs.....	1.7638	2.5721	2.0489

¹ Note that figures also include captive mines.

² The District Board "made their correction for 1937 based upon the 1936 figures, either minus or plus to take care of any change that might have taken place" (Tr. 343). The Board likewise approved the recommendation of the Bureau of Research and Statistics as to the test audit and investigation of out-of-line items (Tr. 346-347). (See also Exhibits 290 and 291.) It would therefore appear necessary to deduct from the Board's determinations any disallowances or revisions proved to be applicable to the cost data for 1936. (See Appendix Table 1.)

³ District Board No. 15 submitted its final cost determinations June 4, 1938 (Ex. 291), and accepted as accurate the cost data from Statistical Bureau No. 15, transmitted to it by the Commission (Tr. 342). In the audit of tabulations, June 7, 1938, the Bureau of Research and Statistics made a complete retabulation of the reports for small mines of under 50 tons daily capacity in District No. 15 (Tr. 307), which resulted in a net increase in the District total cost of \$0.0025 per ton (Ex. 299, Tr. 308). As the change was negligible it was not formally submitted to the District Board prior to the hearing. The \$0.0025 increase is here properly apportioned between producing-administrative expense and selling cost.

⁴ District Board did not compute the increase in cost resulting from the raising of Federal Unemployment tax from 2 percent to 3 percent effective January 1, 1938. The adjustments shown here for this item are those computed by the Bureau of Research and Statistics in Exhibit 289 (Tr. 332).

⁵ Analysis of the District Board's Exhibit 291 which is derived in part from Commission Exhibits 278, 280, and 277, giving preliminary costs for April-December, 1937, indicates that the Board's computation includes tax payments under the Coal Act in the reported selling cost amounting to \$0.0074 per ton for strip mines over 50 tons daily capacity and \$0.0074 per ton for deep mines over 50 tons daily capacity. With allowance for the small mines of less than 50 tons the amount included in selling cost for the total ascertainable tonnage is \$0.0071.

These amounts of \$0.0074 and \$0.0071 per ton are eliminated from the selling schedule and transferred to the producing and administrative cost schedule. At the same time there are added to the producing-administrative schedule such amounts as are necessary (\$0.0025 in the case of strip mines, \$0.0024 in the case of deep mines, and \$0.0025 for mines under 50 tons daily capacity), to equal the tax of one cent per ton payable under the Coal Act, including amounts already charged to producing and administrative costs.

TABLE 6.—Bureau of Research and Statistics' Computation of the Actual Costs of June-December 1937, in District No. 15, Adjusted for All Factors Operative Since January 1, 1938, for Which Proof Was Supplied in the Record

[Incorporating also all revisions and disallowances resulting from the record]

Item	Total strip mines over 50 tons daily capacity	Total deep mines over 50 tons daily capacity	Total ascertainable tonnage including mines under 50 tons daily capacity
Producing and administrative cost: ¹ Actual costs June-December 1937 with adjustments for Federal Unemployment and Bituminous Coal Act taxes (incorporating all revisions and disallowances) appendix table 3. Transfer of sales tax from selling schedule to producing and administrative schedule per table 8. Adjustments for other factors operative since Jan. 1, 1938, proposed by District Board and established by the record.	\$1.6157	\$2.4127	\$1.9121
	+.0005	+.0016	+.0007
	None	None	None
Total producing and administrative.....	1.6162	2.4143	1.9128
Selling costs on coal sold commercially: ² Actual costs June-December 1937 with adjustments for Federal Unemployment and Bituminous Coal Act taxes (incorporating all revisions and disallowances) appendix table 3. Transfer of sales tax from selling schedule to pro-	.1516	.1274	.1356

NOTE.—See footnotes at end of table.

TABLE 6.—Bureau of Research and Statistics' Computation of the Actual Costs of June-December 1937, in District No. 15, Adjusted for All Factors Operative Since January 1, 1938, for Which Proof Was Supplied in the Record—Continued

[Incorporating also all revisions and disallowances resulting from the record]

Item	Total strip mines over 50 tons daily capacity	Total deep mines over 50 tons daily capacity	Total ascertainable tonnage including mines under 50 tons daily capacity
ducing and administrative schedule per table 8. Adjustments for other factors operative since Jan. 1, 1938, proposed by District Board and established by the record.....	-\$.0005	-\$.0020	-\$0.0008
	None	None	None
Total selling cost.....	.1511	.1254	.1348
Total producing, administrative, and selling cost: Actual costs June-December 1937 with adjustments for Federal Unemployment and Bituminous Coal Act taxes (incorporating all revisions and disallowances) appendix table 3. Sales tax adjustment, net. Total adjustments for other factors operative since Jan. 1, 1938, as itemized above.....	1.7673 .0000 None	2.5401 -.0004 None	2.0477 -.0001 None
Total producing, administrative, and selling costs.....	1.7673	2.5397	2.0476

¹ Note that figures also include captive mines.

² The tax payable under the Bituminous Coal Act is charged to producing and administrative expense rather than to selling cost.

TABLE 7.—Transfer of Sales Taxes From Selling Schedule to Producing and Administrative Schedule Year 1936, District No. 15

Item	Total strip mines over 50 tons daily capacity		Total deep mines over 50 tons daily capacity		Total ascertainable tonnage includ- ing captive mines	
Tons produced, per findings table 1-a.....	4,415,594		2,101,142		7,030,072	
Tons all other sales, per findings table 1-a.....	4,384,185		1,650,632		6,537,520	
	Amount	Per ton	Amount	Per ton	Amount	Per ton
Producing and administrative costs, per findings table 1-a.....	\$6,568,398	\$1.4875	\$4,809,970	\$2.2892	\$12,575,836	\$1.7889
Add:						
Sales tax (C.D. 1, item 13 h.) ¹	359		1,309		1,668	
Sales tax (C.D. 1, item 15 a.) ¹						
Total addition.....	359	.0001	1,309	.0006	1,668	.0002
Producing and administrative costs, adjusted.....	6,568,757	1.4876	4,811,279	2.2898	12,577,504	1.7891
Selling costs on coal sold commercially, per find- ings table 1-a.....	626,765	.1430	192,167	.1164	831,252	.1271
Deduct: Sales tax (C.D. 1, item 13 h.) ¹	359	.0001	1,309	.0008	1,668	.0002
Selling costs on coal sold commercially, adjusted.....	626,406	.1429	190,858	.1156	829,584	.1269
Total cost, producing, administrative and selling, per findings table 1-a.....		1.6305		2.4056		1.9160
Total cost, producing, administrative and selling, adjusted.....		1.6305		2.4054		1.9160

¹ Amounts for commercial mines only taken from C.D. 1-a.

TABLE 8.—Transfer of Sales Taxes From Selling Schedule to Producing and Administrative Schedule June–December 1937, District No. 15

Item	Total strip mines over 50 tons daily capacity		Total deep mines over 50 tons daily capacity		Total ascertainable tonnage includ- ing captive mines	
	Amount	Per ton	Amount	Per ton	Amount	Per ton
Tons produced, per findings, table 2-a	2,820,800		948,484		4,058,466	
Tons all other sales, per findings, table 2-a	2,791,808		731,780		3,806,913	
Producing and administrative costs, per findings, table 2-a	\$4,512,892	\$1.5999	\$2,263,403	\$2.3863	\$7,470,788	\$1.8408
Add:						
Sales tax (C. D. 1, item 15 h) ¹	1,451		1,494		2,945	
Sales tax (C. D. 1, item 17 a) ¹	43		13		56	
Total addition	1,494	.0005	1,507	.0016	3,001	.0007
Producing and administrative costs, adjusted	4,514,386	1.6004	2,264,910	2.3879	7,473,789	1.8415
Selling costs on coal sold commercially, per find- ings, table 2-a	446,226	.1598	99,018	.1353	551,759	.1449
Deduct: Sales tax (C. D. 1, item 15 h) ¹	1,451	.0005	1,494	.0020	2,945	.0008
Selling costs on coal sold commercially, adjusted	444,775	.1593	97,524	.1333	548,814	.1441
Total cost, producing, administrative and selling, per findings, table 2-a		1.7597		2.5216		1.9857
Total cost, producing, administrative and selling, adjusted		1.7597		2.5212		1.9856

¹ Amounts for commercial mines only taken from C. D. 1-a.

MINIMUM PRICE AREA 5

On the basis of the foregoing findings of fact, and after due consideration of all the evidence the Commission finds the weighted average of the total costs of the ascertainable tonnage produced in Minimum Price Area No. 5 in the calendar year 1936, adjusted to give effect to any changes in wage rates, hours of employment, or other factors substantially affecting costs, exclusive of seasonal changes, and to reflect as accurately as possible changes which have been established since January 1, 1936, to be \$2.0392 per ton.

By the Commission.

[SEAL] PERCY TETLOW,
Chairman.

Dated this the 25th day of May 1939.

[F. R. Doc. 39-1884; Filed, May 31, 1939;
2:49 p. m.]TITLE 33—NAVIGATION AND
NAVIGABLE WATERS

COAST AND GEODETIC SURVEY

APPOINTMENT OF JUNIOR FIELD OFFICERS

Section 501.02 of the Regulations of the Coast and Geodetic Survey is amended to read as follows:

§ 501.02 Appointment of junior field officers. Junior engineers and deck officers shall be appointed by the Secretary of Commerce from a list of eligibles established by competitive examinations conducted in accordance with the rules of the U. S. Civil Service Commission.

Persons to be eligible for appointment must have successfully completed a full 4-year course leading to a bachelor's degree in engineering subjects in a college or university of recognized standing. Preference in appointments will be given to applicants between the ages of 20 and 26 years who are graduates from a course in civil engineering or a course in geodesy and surveying. A limited number of appointments of electrical engineering graduates may be made to meet specific needs of the service. All applicants must be male citizens of the United States and of good moral character.

(a) Before appointment is made, candidates must meet the physical requirements prescribed in the standard examination for commissioned officers of the U. S. Coast Guard, as modified herein. Such an examination will be made by a medical officer of the U. S. Public Health Service, or if such an officer is not available, by a medical officer of the Army or Navy.

(b) In addition to possessing sound physical health and freedom from disease or tendency thereto which would interfere with the full performance of duty, the candidate must meet the following requirements: He must have a 20/20 vision in each eye without glasses. He must not be color blind. He must be able to hear whispered conversation at a distance of 15 feet and ordinary conversation at a distance of 30 feet. He must be at least 5 feet 6 inches in height in his bare feet. Except as noted below, the following table giving the proper height, weight, and chest

measurements of candidates must be observed:

Height	Weight	Allow- ance for un- der- weight	Chest measure- ments	
			At ex- pira- tion	Mo- bility
Inches	Pounds	Pounds	Inches	Inches
66	132	8	32½	2
67	134	8	33	2
68	141	12	33¼	2½
69	148	15	33½	2½
70	155	20	34	2½
71	162	20	34¼	2½
72	169	20	34¾	3
73	176	20	35¼	3
74	183	20	35¾	3½

Exception to table for height and weight.—If an applicant weighs more than the number of pounds stated in the above table as appropriate for his height, he may be accepted if the overweight is due to muscle and bone, but he must be rejected if it is due to fat. (R. S. 161: 5 U.S.C. 22)

[SEAL] J. M. JOHNSON,
Acting Secretary of Commerce.

Approved: May 6, 1939.

[F. R. Doc. 39-1885; Filed, May 31, 1939;
3:30 p. m.]

TITLE 36—PARKS AND FORESTS

NATIONAL PARK SERVICE

PART 25—NATIONAL MILITARY PARKS

LICENSED GUIDE SERVICE REGULATIONS

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Sec.	
25.1	License.
25.2	Supervision; suspensions.
25.3	Schedule of rates.
25.4	Badges and uniforms.

Pursuant to the authority granted to the Secretary of the Interior by the Act of August 25, 1916 (39 Stat. 535), and to the authority granted to the Secretary of War by the Act of March 2, 1933 (47 Stat. 1420), and transferred to the Secretary of the Interior by Executive Order No. 6166, June 10, 1933, as interpreted by Executive Order No. 6228, July 28, 1933, the following regulations are made, prescribed and published for the regulation and maintenance of licensed guide service at all national military parks where such service has been established, or hereafter may be authorized in the discretion of the Secretary of the Interior upon the recommendation of the Director of the National Park Service:

§ 25.1 License. (a) No person shall be permitted to offer his services or to act as a guide unless licensed for that purpose by the superintendent. Any person desiring to become a licensed guide

shall make application to the superintendent in writing for authority to take the examination for a license as guide.

(b) Guides shall be of good character, in good physical condition, honest, intelligent, tactful, and of good repute. They must be thoroughly familiar with the history of the events which the park commemorates and with the location of all memorials. It is their duty to escort visitors to the various parts of the park and point out different historical features. The story of the guides shall be limited to the historical outlines approved by the superintendent and shall be free from praise or censure.

(c) Examinations will be held at parks where licensed guide service is authorized, at times to be designated by the Director of the National Park Service, for the purpose of securing a list of eligibles for such service. The examination will consist of an investigation of the character, reputation, intelligence, and ability of the applicants, and of questions designed to test their knowledge of the history of the battle, or features of historical interest, the markings of the park, the rules and regulations promulgated for the government of the park, and the regulations governing the guide service. Examination questions will be prepared under the direction of the Director of the National Park Service, who will likewise supervise the marking of examination papers and the rating of applicants.

(d) The names of applicants who successfully pass the examination will be placed on a list of eligibles and selected in accordance with their relative standing.

(e) Each person licensed to act as guide will be issued a license in the following form:

(Place)

(Date)

-----, having successfully passed the examination prescribed for license, is hereby licensed to offer his service as a guide to visitors. This license is issued subject to the condition that the licensee shall comply with all the rules and regulations prescribed for guide service by the Secretary of the Interior and with the prescribed schedule of rates, copies of all of which have been furnished to him.

This license will be renewed at the expiration of one year from the date of issue, provided the rules above-mentioned have been fully complied with and services rendered satisfactorily.

Failure to act as guide for any period exceeding thirty days automatically suspends this license which will only be renewed upon proper application.

Supt., National Military Park.

(f) Before being issued a license to act as a guide, each applicant will be required to subscribe to the following agreement:

(Place)

(Date)

To Superintendent, ----- National Military Park.

For and in consideration of the issuance to me of a license to act as guide, I hereby

accept and agree to observe fully the following conditions:

1. To abide by and observe the laws and all rules and regulations promulgated for the government of the park and for the regulation of guide service.

2. In case of difference of opinion as to the interpretation of any law, rule, or regulation, to accept the decision of the superintendent.

3. To accord proper respect to the park rangers in their enforcement of the rules and regulations.

4. To require drivers of all vehicles, while under my conduct, to observe the park rules and regulations.

5. To be watchful to prevent damage to, or destruction of, park property or acts of vandalism affecting monuments, buildings, fences, or natural features of the park; to report any such damage, destruction, or vandalism which I may observe to the nearest available ranger without delay, and to furnish him with all information in my possession tending to identify the offenders and assist in their apprehension and punishment.

6. To demand of visitors no more than the authorized fees for guide service and, when employed, to render service to the best of my ability.

7. To advise visitors who employ me, in advance, the length of time needed for a trip and its cost and, if visitors desire a shortened tour, to arrange for such service as may suit their convenience.

8. Not to operate any passenger vehicle, or vehicle of any kind for hire, while pursuing the vocation of guide or wearing a guide's badge or uniform.

9. In the event my license should be suspended or revoked by the superintendent, to refrain from offering my services or pursuing the vocation of guide, pending appeal to and decision of the Director of the National Park Service.

10. To return the license and official badge without delay to the superintendent should my license be revoked or suspended for more than 5 days or upon abandoning the occupation of guide for more than 30 consecutive days.

11. While wearing the badge of a guide or any uniform or part of a uniform indicating me to be a guide, I will not act as agent, solicitor, representative, or runner for any business or enterprise whatever (except in offering my services as a guide to visitors), nor solicit nor accept from any person, firm, association, or corporation any fee, commission, or gratuity for recommending their goods, wares, or services.

(Signed) -----

§ 25.2 *Supervision; suspensions.* (a) The guide service will operate under the direction of the superintendent or his designated representative. Records will be kept of the efficiency of the guides and of all matters pertaining to the service.

(b) Superintendents are authorized to suspend any guide for violation of the regulations or for conduct prejudicial to the interests of the Government. A full report of the facts attending each suspension will be made to the Director of the National Park Service. The license of a guide who has been suspended indefinitely will not be renewed without the approval of the Director of the National Park Service.

§ 25.3 *Schedule of rates.* As the conditions of each park differ with respect to the proper charge for the service rendered to the public, the schedule of rates for observance by the licensed guides at each separate park will be submitted to the Director of the National Park Service for approval. The superintendent will prepare itineraries arranged so as best to observe the different features of the bat-

tlefield and submit them with recommendations as to schedule of rates to the Director of the National Park Service for approval.

§ 25.4 *Badges and uniforms.* Licensed guides will be furnished with official badges as evidence of their authority, which shall remain the property of the Government and be returned to the superintendent upon relinquishment or revocation of the license as a guide. Where conditions warrant it and its purchase would not prove a hardship on the guides, they may be required to adopt a standard uniform, to be procured at their own expense.

[SEAL]

HAROLD L. ICKES,
Secretary of the Interior.

Approved May 23, 1939.

[F. R. Doc. 39-1887; Filed, June 1, 1939; 9:42 a. m.]

TITLE 47—TELECOMMUNICATION FEDERAL COMMUNICATIONS COMMISSION

CHAPTER V. RULES AND REGULATIONS GOVERNING EXPERIMENTAL SERVICES

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PART 50—DEFINITIONS

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50.01	Experimental service.
50.02	Class 1 experimental station.
50.03	Class 2 experimental station.
50.04	Class 3 experimental station.

§ 50.01 *Experimental service.* The term "experimental service" means a service conducted by a station engaged in research and experimentation for the advancement of the radio art. (There are three classes of experimental stations, namely, Class 1, Class 2 and Class 3.) *†

§ 50.02 *Class 1 experimental station.* The term "Class 1 experimental station" means a station licensed for general or specific research and experimentation for the advancement of the radio art along lines which are not specifically directed to any proposed or established radio service. *†

*Sec. 4, 44 Stat. 1163; 47 U.S.C. 84 (f), rules promulgated thereunder continued in effect by Sec. 604, 48 Stat. 1103; 47 U.S.C. 604.

†Adopted by the FCC on May 23, 1939, to become effective immediately insofar as all classes of experimental stations in the broadcast service and all applicants for new experimental stations are concerned. The present Rules 302-324 (b), inclusive (C.F.R. Sections 50.01 to 52.07), shall remain in effect until October 1, 1939, for existing licensees of general and special experimental stations, that is, all classes of experimental stations now authorized except those operating in the broadcast service. On October 1, 1939, Sections 50.01 to 54.07, inclusive, shall automatically supersede Rules 302-324 (b), inclusive (C.F.R. Sections 50.01 to 52.07).

*See Sections 52.01 to 52.05 governing this class of station in addition to part 51, "In General."

§ 50.03 *Class 2 experimental station.* The term "Class 2 experimental station" means a station licensed for research and experimentation in radio directed toward the development of a proposed or established radio service.² (Class 2 experimental stations are divided into several subclasses such as: Class 2 experimental police station or Class 2 experimental broadcast station, and there may be further subclasses of these such as experimental television or high frequency broadcast stations which are subclasses of Class 2 experimental broadcast stations. While the complete name of a television broadcast station would be Class 2 experimental television broadcast station, a short name will be used as set out in the detailed service rules governing each such class.*†

§ 50.04. *Class 3 experimental station.* The term "Class 3 experimental station" means a station licensed to a citizen interested in radio technique solely with a personal aim to conduct experiments on his own behalf, requiring the use of radio facilities for a limited time.*†

PART 51—IN GENERAL

Sec.

- 51.01 Persons eligible.
- 51.02 Showing required.
- 51.03 Licenses required for separate experimental projects.
- 51.04 Limitations on use.
- 51.05 Non-exclusive use of frequencies; interference.
- 51.06 Special requirements.
- 51.07 Adherence to program of research.
- 51.08 Operating schedule.
- 51.09 Additional orders as needed.
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- 51.11 Frequencies.
- 51.12 Tolerance.
- 51.13 Frequency measuring or calibrating apparatus.
- 51.14 Power restrictions.
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- 51.16 Licensed operator requirements.
- 51.17 Equipment and service tests.
- 51.18 Records of operation.
- 51.19 Posting of station license.
- 51.20 Operator's license.
- 51.21 Experimental report.
- 51.22 License period.
- 51.23 Special temporary authorizations.

§ 51.01. *Persons eligible.* Experimental licenses may be granted to persons engaged in fundamental, general or specific radio research experimentation; developing, testing or calibrating radio equipment; developing new services; or extending or perfecting new systems in established services.*†

§ 51.02 *Showing required.* Licenses for Class 1 and Class 2 experimental stations will be issued only after a satis-

factory showing has been made in regard to the following, among others:

1. That the applicant has an organized plan of research leading to a specific objective.
2. That the applicant has a program of research and development that has reached a stage in the laboratory where actual transmission by radio is essential to the further progress of the experimental program.
3. That the program of research has reasonable promise of substantial contribution to the expansion or extension of the radio art or is along lines not already investigated.
4. That the program of research and experimentation will be conducted by qualified personnel.
5. That the applicant is legally and financially qualified and possesses adequate technical facilities to carry forward the program and has made adequate financial appropriations toward this end.
6. That experimental stations shall only be operated in such a manner and at such times as to preclude interference with established stations or services.
7. That the requirements for obtaining a license for the particular class of experimental station applied for will be met. (See sections governing each class.)
8. That the public interest, convenience and necessity will be served through the operation of the proposed station.*†

§ 51.03. *Licenses required for separate experimental projects.* A separate experimental station license may be issued for each main class of experimental station. When different subclasses or widely divergent developments or projects are proposed, a separate license will be required for each such project.*†

§ 51.04. *Limitations on use.* Experimental stations shall not be used to conduct general message traffic of any kind, to demonstrate equipment for prospective sales purposes, to transmit programs for direct entertainment, to transmit the programs of any other station, except in conjunction with experimental programs, or to render any commercial communication service or communications involving advertising, either directly or indirectly, subject to specific limitations and restrictions which will be prescribed in individual cases by the Commission. This authority will be granted only for special reasons to obtain information or data which gives promise of being of benefit to the radio art.*†

§ 51.05 *Non-exclusive use of frequencies; interferences.* No licensee of an experimental station shall have exclusive use of any frequency. In case interference will be caused by simultaneous operation, licensees shall endeavor to arrange satisfactory time division. If such an agreement cannot be reached the Commission will determine and specify the time division upon request of either licensee.*†

§ 51.06 *Special requirements.* The Commission may, from time to time, require the licensee of an experimental station to conduct experiments that are deemed desirable and reasonable for the development of the radio art.*†

§ 51.07 *Adherence to program of research.* The program of research and experimentation as offered by an applicant in its application for construction permit or license for an experimental station or in the instrument of authorization shall be substantially adhered to unless the licensee is authorized to do otherwise by the Commission. The general program of experimentation will be specified in the instrument of authorization.*†

§ 51.08 *Operating schedule.* A licensee of an experimental station is not required to adhere to a regular schedule of operation, but shall actively conduct a program of research and experimentation, provided, however, when the program of research involves only intermittent experiments, such as to develop and test radio equipment, the station may be operated only when there is a need therefor.*†

§ 51.09 *Additional orders as needed.* In case all the general rules and regulations and the detailed rules governing each class of experimental station do not cover all phases of operation or experimentation with respect to external effects, the Commission may make supplemental or additional orders in each case as deemed necessary for operation in the public interest, convenience and/or necessity.*†

§ 51.10 *Supplementary statement.* A supplementary statement shall be filed with and made a part of each application for construction permit for an experimental station confirming the applicant's understanding:

1. That all operation on the frequencies requested will be on an experimental basis.

2. That the granting of the authority requested shall not be construed as a finding on the part of the Commission:

(a) that the frequencies authorized are the best suited to the particular purpose to be served by the station,

(b) that in the event the experimentation proves successful, either the particular frequencies authorized or any others will be allocated to the service developed for use on a permanent or commercial basis,

(c) that the applicant is qualified to operate a station in the service on any basis other than experimental.

3. That the applicant desires and is willing to conduct and finance the experimental program with full knowledge and understanding of the provisions of this section.*†

§ 51.11 *Frequencies.* (a) The following frequencies are allocated for assignment to Class 1 and Class 2 experimental stations:

² In case it is desired to operate a Class 2 station to establish a new radio service, an application therefor and a petition setting out the full facts as to the need and reasons for such service should be filed.

[†] See Sections 53.01 to 53.05 governing this class of station in addition to Part 51, "In General."

[†] See Sections 54.01 to 54.07 governing this class of station in addition to Part 51, "In General."

1614	8650	30660
2396	8655 ¹	31020
2398	8660	31140
2400		31180
	9125	31540
3490	9135	33340
3492.5	9145	33460
3495		33620
	12855	35060
4795	12862.5	35460
4797.5	12870	37060
4800		37140
	17300	37540
6420	17310	39140
6425	17320	39460
6430	23100	39540
132400	137860	210000-216000 ²
132680	138140	264000-270000 ²
133380	138840	300000-400000
134360	139540	401000 and above
135340	139960	
137440	162000-168000 ²	

¹ This frequency will not be available for this service after October 1, 1939.

² Frequencies in this band are not available for Class 2 experimental stations directed toward an established service. See Appendix B of the General Rules for the specific frequencies available in this band for experimental stations.

(b) In addition, Class 2 stations may operate on 129,000-144,000 kc.²

(c) The following frequencies are allocated for assignment to Class 3 experimental stations:

2398	300000-400000
3492.5	401000 and above
31140	

(d) Class 1 and Class 2 experimental stations may be licensed to operate on frequencies other than those listed above provided:

1. The need for the other frequencies is fully stated by the applicant.

2. A satisfactory showing is made that the frequencies assigned for use by the experimental service are unsuitable for the proposed experimental program.

3. No interference will be caused to the stations regularly assigned the frequencies requested.

4. Where frequencies are allocated for Class 2 experimental stations in the rules governing the service in which the Class 2 experimental station is to operate, then (1) and (2) above need not be considered.

5. In any case where there is a possibility of interference with the regular service on the frequencies sought to be used experimentally [under provisions of Section 51.11 (d)], the applicant shall submit a statement from the licensees of stations on such frequency, or in a case of a frequency on which transmissions are received in the United States, a statement from the person receiving signals on that frequency, that there is no objection on his part to the experimental use of the frequency.*†

* Appendix B of the General Rules provides that all frequencies between 129,000 and 144,000 kilocycles are also available for assignment on an experimental basis to stations engaged in the development of a specific service in accordance with the rules and regulations governing that service.

§ 51.12 *Tolerance.* (a) The operating frequency of the experimental stations shall be maintained within plus or minus the percentage of the assigned frequency as given in Table I, unless otherwise specified by the Commission.

TABLE I

Experimental frequencies within the range	Frequency tolerance (percent)
1614-30,000	0.04
30,000 and above	.05

(b) The frequency of a Class 2 experimental station, operating on frequencies not allocated specifically for experimental stations [see Section 51.11 (d)] shall be maintained in accordance with the rules and regulations governing the service regularly assigned the frequency in event such tolerance is less than that specified in Table I.

(c) Less restrictive tolerances than that specified in subsection (a) of this section may be authorized for Class 1, Class 2 and Class 3 experimental stations provided the applicant presents satisfactory evidence that the program of research can and will be conducted without causing interference to any other radio service.*†

§ 51.13 *Frequency measuring or calibrating apparatus.* (a) The licensee of each experimental station shall operate at the transmitter a frequency measuring device independent of the frequency control of the transmitter.

(b) The frequency measuring device shall be designed and constructed in accordance with good engineering practice, and shall have an accuracy sufficient to determine that the operating frequency is within one-half of the allowed tolerance.

(c) The operating frequencies of each experimental station shall be checked and adjusted, if necessary at the beginning of each period of operation and as often thereafter as necessary to maintain the frequency within the specified tolerance.

(d) Exceptions to the above provisions may be made, provided:

1. The applicant makes a satisfactory showing that the nature of the proposed program precludes compliance with the above provisions.

2. A satisfactory alternative method of maintaining the operating frequency within the allowed tolerance will be employed.*†

§ 51.14 *Power restrictions.* (a) The maximum carrier power requested by an applicant shall not be in excess of the maximum obtainable carrier power output of the transmitter consistent with satisfactory technical operation.

(b) No experimental station shall operate at any time with power in excess of that necessary to carry on the authorized program of research and in no event greater than the authorized power.*†

§ 51.15 *Changes in equipment.* (a) The licensee of each class of experimental station may make any changes

in the equipment that are deemed desirable or necessary unless specifically prohibited from doing so by the terms of the instrument of authorization provided;

1. That the operating frequency is not permitted to deviate more than the allowed tolerance.

2. That the emissions are not permitted outside the authorized band.

3. And that the power output complies with the regulations governing the same.*†

§ 51.16 *Licensed operator requirements.* A licensed operator shall be on duty and in charge of the transmitter during all transmissions unless remote control operation or operation without an operator in attendance is authorized by the terms of the instrument of authorization.*†

§ 51.17 *Equipment and service tests.* (a) Equipment and service tests as authorized in Sections 22.02 and 22.03 may be conducted provided the necessary precautions are taken to avoid interference. Tests of stations operating on frequencies other than those listed in Section 51.11 (a) shall also comply with the rules and regulations governing equipment and service tests for that particular service in which they operate.

(b) The licensees of all classes of experimental stations are authorized to make such routine tests as may be required for the proper maintenance of the station in accordance with Section 22.07 provided they are conducted in conformity with the rules and regulations governing the class of station.*†

§ 51.18 *Records of operation.* (a) The licensees of each experimental station shall maintain adequate records of operation including:

1. Hours of operation.
2. Frequency and frequency check.
3. Power.
4. Types of emission. Program transmitted in case of broadcast station.
5. Research and experimentation conducted.
6. The name of the operator on duty.

(b) The above information shall be made available upon request by authorized Commission representative.

§ 51.19 *Posting of station license.* The original license of an experimental station at a fixed location shall be posted in a conspicuous place. The licenses of mobile, portable and portable-mobile stations shall be readily available for inspection by authorized government representatives.*†

§ 51.20 *Operator's license.* The original license or verification card of each station operator shall be posted or kept in his possession so as to be readily available for inspection when required.*†

§ 51.21 *Experimental report.* A report on the results of the experimental program as specified hereinafter for each class of experimental station shall be filed with and made a part of each application for renewal of license, provided,

however, that matters which the applicant does not wish to publicly disclose may be submitted as a supplementary report. Such supplementary reports will be kept solely for the Commission's information and their contents will not be disclosed without permission of the licensee.*†

§ 51.22 *License period.* (a) Licenses for Class 1 and Class 2 experimental stations will be normally issued for a period of one year unless otherwise stated in the instrument of authorization. Date of expiration of licenses for Class 1 experimental stations and Class 2 experimental stations operating in a service other than broadcast shall be the first day of April of each year. The date of expiration of licenses of Class 2 experimental stations operating in the broadcast service will be governed by the rules and regulations governing that service.

(b) Licenses for Class 3 experimental stations will be issued for a period commensurate with the proposed program of experimentation but in no event for a period greater than one year.

(c) Each licensee of an experimental station shall submit the application for renewal of license at least 60 days prior to the expiration date (Section 15.10).*†

§ 51.23 *Special temporary authorizations.* In making requests for special temporary authorizations, the licensees of all experimental stations shall in addition to complying with Section 15.15 of the Rules of Practice and Procedure specify in detail in the request the following:

1. Frequency.
2. Power.
3. Type of emission.
4. Location of station.
5. Class of station.
6. Time and dates of operation.
7. Purpose of operation.
8. Need for special action without filing formal application.
9. Statement that formal application for construction permit and license will be filed immediately if the operation is to continue.
10. When frequencies other than those assigned for use by the experimental service in Section 51.11 are requested, the applicant shall also submit with its request the information and statements as required by Section 51.10.

PART 52—CLASS 1 EXPERIMENTAL STATIONS

Sec.	
52.01	Persons eligible.
52.02	Showing required.
52.03	Limitations.
52.04	Cancellation without notice or hearing.
52.05	Experimental report.

§ 52.01 *Persons eligible.* Class 1 experimental stations* may be authorized to persons engaged in fundamental, general or specific radio research and experimentation directed toward the advancement of the radio art but not directed to any proposed or established radio service.*†

* See Section 50.02 for definition of Class 1 experimental stations.

§ 52.02 *Showing required.* A license for a Class 1 experimental station will be issued after a satisfactory showing in regard to the following in addition to the general requirements set out in Section 51.02:

(a) That the applicant is primarily engaged either in:

1. Fundamental research on unsolved technical problems and unproven scientific theories;
2. Developing, testing or calibrating of radio equipment;
3. Or general research, experimentation and development of the radio art.

(b) That the applicant is a corporation, institution, manufacturer, research and design laboratory or an association or individual particularly qualified to carry forward the proposed program of research.

§ 52.03 *Limitations.* (a) A license for a Class 1 experimental station will not be granted to conduct research or experimentation directed specifically to the development of a proposed or established radio service.

(b) When the research and experimentation advance to the point where the development of a proposed or established service appears feasible and desirable, the licensee shall make application to modify the license so as to become a Class 2 experimental station in such service.

(c) Only such test messages as are necessary and directly related to the experimental program may be transmitted by Class 1 experimental stations. (Also see Section 51.04).*†

§ 52.04 *Cancellation without notice or hearing.* The applicant for a Class 1 experimental station accepts the license with the express understanding that the authority to use the frequency or frequencies requested is granted upon an experimental basis only and upon the express condition that said grant is subject to change or cancellation by the Commission at any time without advance notice or hearing if in its discretion the need for such action arises.*†

§ 52.05 *Experimental report.* The experimental report for Class 1 experimental stations shall include comprehensive information on the following in the order designated:

- (a) Final objective of experimental program.
- (b) Report on the research and experiments conducted.
- (c) Detailed analysis of the results obtained.
- (d) Copies of any published reports on the experimental work.
- (e) A list of the patent numbers of any patents during the license period as a result of the experimental work accomplished in this or previous periods.
- (f) Any major changes made in the equipment.
- (g) Any other pertinent information.
- (h) The need for the continuation of the experimental program of research

and the necessity for the renewal of the station license.

(i) Total number of hours of operation on each frequency.*†

PART 53—CLASS 2 EXPERIMENTAL STATIONS

Sec.	
53.01	Persons eligible.
53.02	Showing required.
53.03	Subclasses.
53.04	Limitations.
53.05	Experimental report.

§ 53.01 *Persons eligible.* Class 2 experimental stations* may be authorized to persons engaged in research and experimentation in radio directed toward the development of a new or proposed radio service, or some phase of an established radio service.*†

§ 53.02 *Showing required.* A license for a Class 2 experimental station will be issued after a satisfactory showing in regard to the following in addition to the general requirements set out in Section 51.02:

1. That the applicant is primarily interested in research and experimentation in radio directed toward the development of a new or proposed radio service or some phase of an established radio service.

2. That the requirements set out for experimental operation under the service involved will be met. (See rules governing the individual service involved).*†

§ 53.03 *Subclasses.* (a) Class 2 experimental stations may be divided into subclasses with the name of each such class of station established by the rules governing experimental operations in each radio service in which experimental operation is authorized.

(b) Class 2 experimental stations operating in an established service will be further governed by the provisions of the rules concerning experimental operation in such service. (See rules governing experimental operation of broadcast stations, police stations, etc.)

(c) Class 2 experimental stations operating to develop a new service will be governed by tentative rules governing such service and/or the condition and limitation of the operation will be specified in the instrument of authorization.*†

§ 53.04 *Limitations.* The applicant for a Class 2 experimental station accepts the license on the express understanding that,

1. Interference will not be caused to other stations regularly licensed.
2. The frequencies allocated for Class 2 experimental stations under Section 51.11 (d) 4 may not be final and are subject to change or cancellation by the Commission at any time without advance notice or hearing.*†

§ 53.05 *Experimental report.* The experimental report for a Class 2 station

* See Section 50.03 for definition of Class 2 experimental stations and subclasses.

* See footnote 2.

shall state the particular service investigated and include comprehensive information on the following in the order designated:

1. The final objective.
2. Report on the experiment conducted.
3. Detailed analysis of the results obtained.
4. Copies of any published reports.
5. List of the patent numbers of any patents issued during the license period as a result of the experimental work of this or previous periods.
6. Any major changes made in the equipment.
7. If the experimental program is sufficiently advanced, statements as to
 - (a) Frequencies believed to be more suitable and reasons therefor.
 - (b) Probable public support and methods of its determination.
 - (c) Practicability of service conditions.
 - (d) Interference encountered.
 - (e) Pertinent information relative to merits of proposed service.
 - (f) Propagation characteristics of frequencies used, particularly with respect to service objective.
 - (g) Type of signals or communications employed in the experimental work.
8. The need for continuation for the experimental program of research and the necessity for the renewal of the station license.
9. Total number of hours of operation on each frequency.*†

PART 54—CLASS 3 EXPERIMENTAL STATIONS

- Sec.
 54.01 Persons eligible.
 54.02 Showing required.
 54.03 Limitations.
 54.04 Cancellation without notice or hearing.
 54.05 Conditions of operation.
 54.06 Limitations as to Communication.
 54.07 Renewals.

§ 54.01 *Persons eligible.* Class 3 experimental stations* may be authorized to a citizen interested in radio technique solely with a personal aim to conduct an experimental program on his own behalf, requiring the use of radio for a limited time.*†

§ 54.02 *Showing required.* A license for a Class 3 experimental station will be issued after a satisfactory showing in regard to the following in addition to the general requirements of Section 51.02 which are not inconsistent with the provisions below:

1. That the applicant has a definite program requiring the use of radio and facilities necessary to carry forward the program as proposed.
2. That the proposed experiments may be conducted on the frequencies assigned for this class of station.

*See Section 50.04 for definition of Class 3 experimental stations.

3. That the experiments can be completed in a reasonably short time and that applications for renewal will not normally be necessary.

4. That the applicant is a citizen interested in radio technique with a personal aim to conduct an experimental program on his own behalf requiring the use of radio for a limited time.*†

§ 54.03 *Limitations.* Licenses to operate Class 3 experimental stations will be issued under such limitations and restrictions as the Commission may specify which will be set out in each instrument of authorization.*†

§ 54.04 *Cancellation without notice or hearing.* Licenses to operate all Class 3 experimental stations will be granted on a temporary basis only, subject to the condition that the applicant agrees to accept the license with the express understanding that the authority to use the frequency or frequencies may be cancelled without advance notice or hearing.*†

§ 54.05 *Conditions of operation.* Each licensee of a Class 3 experimental station shall not operate its station at such times and in such manner as to cause interference to any existing radio service.

1. Each licensee of a Class 3 experimental station shall conduct listening tests on the frequencies to be used, immediately before and during each test period, and at least once each 15 minutes to insure that no interference will be caused to stations in other services by the operation of its station.

2. Each licensee of a Class 3 experimental station shall give priority to all other classes of experimental stations and shall remain silent during such periods as are found necessary to avoid causing interference.*†

§ 54.06 *Limitations as to communication.* Licensees of Class 3 experimental stations shall not carry on two-way radio communication by means of such stations. Only such test messages as are necessary to conduct the experimental program may be transmitted by this class of station.*†

§ 54.07 *Renewals.* Renewal of license for Class 3 experimental stations may be granted provided an application therefor is filed giving:

1. A complete technical description of the objective and results of the experimental program conducted.
2. A satisfactory showing that the objective of the experimental program has not been attained and that the results indicate the possibility of completing the program within a reasonably short time.*†

By the Commission.

[SEAL]

T. J. SLOWIE,
Secretary.

[F. R. Doc. 39-1883; Filed, May 31, 1939; 2:14 p.m.]

Notices

DEPARTMENT OF AGRICULTURE.

Agricultural Adjustment Administration.

PROCLAMATION OF THE SECRETARY OF AGRICULTURE WITH REGARD TO THE BASE PERIOD TO BE USED FOR THE PURPOSE OF A MARKETING AGREEMENT AND ORDER REGULATING THE HANDLING OF TOMATOES GROWN IN THE STATE OF MISSISSIPPI

By virtue of the authority vested in the Secretary of Agriculture of the United States by the provisions of Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, the undersigned hereby finds and proclaims that, with respect to tomatoes grown in the State of Mississippi, the purchasing power of such tomatoes during the pre-war base period, August 1909-July 1914, cannot be satisfactorily determined from available statistics of the Department of Agriculture for the purpose of the execution of a marketing agreement and the issuance of an order regulating the handling of such tomatoes, but the purchasing power of such tomatoes grown in the State of Mississippi can be satisfactorily determined from available statistics of the Department of Agriculture for the post-war period August 1919-July 1929, which covers the ten marketing seasons, 1920-1929, both dates inclusive. The period August 1, 1919-July 31, 1929, both dates inclusive, is therefore, hereby declared and proclaimed to be the base period to be used in determining the purchasing power of the aforesaid tomatoes grown in the State of Mississippi for the purpose of the execution of a marketing agreement and the issuance of an order¹ regulating the handling of such tomatoes, pursuant to the provisions of said Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended.

In witness whereof, H. A. Wallace, Secretary of Agriculture of the United States, has executed this proclamation in duplicate and has hereunto set his hand and caused the official seal of the United States Department of Agriculture to be affixed in the city of Washington, District of Columbia, this 31st day of May 1939.

[SEAL]

H. A. WALLACE,
Secretary of Agriculture.

[F. R. Doc. 39-1897; Filed, June 1, 1939; 12:09 p.m.]

¹ See p. 2201.

INTERSTATE COMMERCE COMMISSION.

[Ex Parte No. MC 30]

INVESTIGATION TO DETERMINE THE EXTENT AND AREA OF THE MUNICIPALITY OF CINCINNATI, OHIO, AND MUNICIPALITIES CONTIGUOUS THERETO AND THE ZONE ADJACENT TO AND COMMERCIALY A PART OF SUCH MUNICIPALITY OR MUNICIPALITIES

At a session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 10th day of May, A. D. 1939

It appearing, That it is necessary for the proper administration, execution, and enforcement of the Motor Carrier Act, 1935, that a determination be made of the extent and area of the municipality of Cincinnati, Ohio, and of any and all municipalities contiguous thereto, and of the zone adjacent to and commercially a part of said municipality or municipalities, and whether said municipalities are contiguous, within the meaning of Section 203 (b) (8) of the said Act, and that a hearing or hearings should be had for the purpose of taking testimony and investigating and determining said matters:

It is ordered, That an investigation and inquiry be, and it is hereby, instituted by the Commission, on its own motion, in order to determine and define the area and extent of the municipality of Cincinnati, Ohio, and of any municipality or municipalities contiguous thereto and of the zone adjacent to and commercially a part of such municipality or municipalities, and to take such other action and make such other findings, determinations, and orders in the premises as the facts and circumstances may appear to warrant.

It is further ordered, That this proceeding be, and it is hereby, referred to Examiner A. F. Borroughs for hearing on the 11th day of July, A. D. 1939, at 10 o'clock a. m. (standard time) at the Netherland - Plaza Hotel, Cincinnati, Ohio, and for the recommendation of an appropriate order thereon, accompanied by the reasons therefor.

And it is further ordered, That notice of this proceeding be duly given.

By the Commission, division 5.

[SEAL]

W. P. BARTEL,
Secretary.

[F. R. Doc. 39-1888; Filed, June 1, 1939; 10:20 a. m.]

SECURITIES AND EXCHANGE COMMISSION.

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 27th day of May 1939.

No. 106—7

[File No. 37-32]

IN THE MATTER OF PUBLIC UTILITY ENGINEERING AND SERVICE CORPORATION

ORDER PERMITTING SERVICE COMPANY TO OPERATE WHERE SPECIAL OR UNUSUAL CIRCUMSTANCES

The Commission, having issued its conditional order approving an application of and permitting Public Utility Engineering and Service Corporation to perform, as a subsidiary service company of Standard Gas and Electric Company, certain service, sales, and construction contracts, and it appearing therein that such company, pending the consummation of a proposed change of ownership referred to in such order, proposes to continue servicing activities for associate companies as a mutual service company, and it appearing that the circumstances are special or unusual,

It is ordered, Pursuant to Section 13 (b) (2) that Public Utility Engineering and Service Corporation be, and hereby is, permitted to operate as a mutual service company and to perform services, or construction work for, or sell goods to, associate companies thereof, to the extent set forth in the application referred to, subject, however, to the following terms and conditions:

(1) That Public Utility Engineering and Service Corporation, in operating as permitted by this order, comply with all provisions of the Act and of the rules and regulations thereunder that are applicable to approved service companies;

(2) That this order terminate not later than 90 days from the date of this order or at such prior date as all the capital stock of Public Utility Engineering and Service Corporation is acquired by Standard Gas and Electric Company.

By the Commission.

[SEAL]

FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-1892; Filed, June 1, 1939; 11:11 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 27th day of May 1939.

[File No. 37-32]

IN THE MATTER OF PUBLIC UTILITY ENGINEERING AND SERVICE CORPORATION

ORDER REGARDING DECLARATION AND PAYMENT OF DIVIDENDS

Public Utility Engineering and Service Corporation, having filed an application pursuant to Rule U-12C-2 of the Public Utility Holding Company Act of 1935 for an order approving the declaration and payment of a dividend out of capital surplus; and

Hearings having been held¹ on such application as amended after appropriate

¹ 4 F.R. 221 DI.

notice, and the Commission having considered the record in this matter and having made and filed its findings and opinion herein;

It is ordered, That the application as amended be, and the same hereby is, approved, subject, however, to the following conditions:

(1) No such partial liquidating dividend be declared or paid to Standard Gas and Electric Company unless and until all of the other conditions prescribed by the Commission's order relating to the approval of Applicant as a subsidiary service company shall have been complied with.

(2) No such partial liquidating dividend be declared or paid to the extent that such payment would reduce Applicant's available working capital below a sum equal to two months' estimated expenses of operation or which would reduce Applicant's capital surplus to less than \$100,000.

By the Commission.

[SEAL]

FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-1893; Filed, June 1, 1939; 11:11 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 27th day of May 1939.

[File No. 37-32]

IN THE MATTER OF PUBLIC UTILITY ENGINEERING AND SERVICE CORPORATION

ORDER APPROVING A SUBSIDIARY SERVICE COMPANY

Public Utility Engineering and Service Corporation, having filed an application and amendments thereto pursuant to Section 13 (b) of the Public Utility Holding Company Act of 1935 and Rule U-13-22 promulgated thereunder for approval as a service company for companies in the Standard Gas and Electric Company holding company system;

Hearings having been held¹ on such application as amended after appropriate notice, and the Commission having considered the record in this matter and having made and filed its findings and opinion herein;

It is ordered, That the application as amended be, and the same hereby is, approved, and Public Utility Engineering and Service Corporation be permitted to perform, as a subsidiary service company of Standard Gas and Electric Company, service, sales, and construction contracts to the extent and in the manner set forth in such application.

¹ 4 F.R. 221 DI.

However, this order of approval shall terminate and be revoked unless within 90 days of the date of this order the changes enumerated below, and any other changes set forth in the application are effected and notice to that effect shall have been filed with the Commission.

(1) Applicant's capital stock be acquired by Standard Gas and Electric Company from the present holders of such stock for a total consideration of \$400,000.

(2) The stated liability of \$229,666 arising out of deficiency tax assessments be eliminated through cancellation of this indebtedness by Applicant's creditor, Standard Gas and Electric Company.

(3) The capital stock be reduced from \$400,000 to \$250,000.

(4) A return of monies held by Applicant as tax withholding agent be made to the operating companies.

(5) The investments in Pettengill, Incorporated, and Little Wolf Power Company be disposed of as stated in the application.

(6) A partial liquidating dividend not to exceed \$139,102.42 in cash be declared and paid.

The Commission's order shall further be subject to the following conditions:

(1) No substantial change in the organization of Applicant (other than those referred to in these findings and as set forth in the application) or the method of allocating cost to associate companies, and no increase in the scope of services to be rendered to those companies, shall be made without first obtaining the approval of this Commission of such change.

(2) To the extent that Applicant's cost-allocation method does not result in a fair and equitable allocation of its costs among the serviced associate companies, the Commission will require, after notice and opportunity for hearing, prospective adjustments, and, to the extent that it appears feasible and equitable, retroactive adjustments of such cost allocations, and reserves jurisdiction for these purposes.

The order of the Commission is not to be construed as a ruling that Applicant may not be required to effect any changes in its organization and operation, or any other changes which become necessary for it to conform with the Act, present or future rules, regulations or orders. The Commission reserves jurisdiction to reconsider the servicing activities of Applicant at an appropriate future time, and after notice and opportunity for hearing, by order, to revoke, suspend, or modify the approval granted to Applicant by this order.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-1896; Filed, June 1, 1939;
11:12 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 29th day of May, A. D. 1939.

[File No. 32-140]

IN THE MATTER OF PORTLAND GENERAL ELECTRIC COMPANY

ORDER EXEMPTING EXTENSION OF MATURITY OF CERTAIN NOTES

Portland General Electric Company, a registered holding company and a subsidiary of Portland Electric Power Company, also a registered holding company, having duly filed with this Commission an application pursuant to Section 6 (b) of the Public Utility Holding Company Act of 1935, for exemption from the provisions of Section 6 (a) of the Act of the extension from May 31, 1939 to May 31, 1940, of the maturity of applicant's 5% Collateral Extension Notes dated May 31, 1938, outstanding in the principal amount of \$3,420,000;

A hearing on said application having been held after appropriate notice; the record in this matter having been examined; and the Commission having as of the date hereof made and filed its findings herein;

It is ordered, That the aforesaid extension of the maturity of applicant's 5% Collateral Extension Notes dated May 31, 1938, be, and the same is hereby exempted from the provisions of Section 6 (a) of the Public Utility Holding Company Act of 1935, subject, however, to the following conditions:

(1) That the extension of the maturity of the aforesaid notes shall be effected in compliance with the terms and conditions of, and for the purposes represented by, the amended application;

(2) That if the express authorization of the extension of the maturity of such notes by the Public Utilities Commissioner of Oregon or by the Department of Public Service of the State of Washington shall be revoked by either of them or otherwise terminated, this exemption shall immediately terminate without further order of this Commission; and

(3) That, within ten days after the extension of the maturity of the aforesaid notes, the applicant shall file with this Commission a certificate of notification showing that said extension has been effected in accordance with the terms and conditions of, and for the purposes represented by, said amended application.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-1895; Filed, June 1, 1939;
11:12 a. m.]

4 F.R. 2023 DI.

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 31 day of May, A. D. 1939.

[File No. 32-147]

IN THE MATTER OF EAST TENNESSEE LIGHT & POWER COMPANY

NOTICE OF AND ORDER FOR HEARING

An application pursuant to section 6 (b) of the Public Utility Holding Company Act of 1935, having been duly filed with this Commission by the above-named party;

It is ordered, That a hearing on such matter be held on June 19, 1939, at 10:00 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue, NW., Washington, D. C. On such day the hearing-room clerk in room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

It is further ordered, That James G. Ewell or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice to continue or postpone said hearing from time to time.

Notice of such hearing is hereby given to such declarant or applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before June 14, 1939.

The matter concerned herewith is in regard to an application by East Tennessee Light & Power Company seeking exemption from Section 6 (a) of the Act of the issue and sale of a Promissory Note in the amount of \$481,000 and \$481,000 First Mortgage and Refunding Bonds, 3¾% Series, due 1943, which are to be pledged as collateral to said note. Said note is to be sold at principal amount to The Chase National Bank of the City of New York and the proceeds used toward payment at maturity of \$481,000 principal amount of Bristol Gas and Electric Company, 5% First Mortgage Gold Bonds, due July 1, 1939.

By the Commission.

[SEAL] FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-1894; Filed, June 1, 1939;
11:12 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 31 day of May, A. D. 1939.

[File No. 46-148]

IN THE MATTER OF CONTINENTAL GAS & ELECTRIC CORPORATION

[Public Utility Holding Company Act of 1935—Section 10 (a) (1)]

NOTICE OF AND ORDER FOR HEARING

An application pursuant to section 10 (a) (1) of the Public Utility Holding Company Act of 1935, having been duly filed with this Commission by the above-named party:

It is ordered, That a hearing on such matter be held on June 19, 1939, at 10:15 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue NW., Washington, D. C. On such day the hearing-room clerk in room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

It is further ordered, That Charles S. Moore or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice to continue or postpone said hearing from time to time.

Notice of such hearing is hereby given to such declarant or applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before June 14, 1939.

The matter concerned herewith is in regard to the proposed acquisition by applicant, a registered holding company, of 20,000 shares of the Common Stock (\$100 par value) of its subsidiary, Iowa-Nebraska Light and Power Company, also a registered holding company, in consideration of the discharge of \$2,000,000 of indebtedness owing to applicant by its subsidiary.

By the Commission.

[SEAL]

FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-1891; Filed, June 1, 1939; 11:11 a. m.]

United States of America—Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 1st day of June, A. D. 1939.

[File No. 32-145]

IN THE MATTER OF NEW YORK STATE ELECTRIC & GAS CORPORATION

NOTICE OF AND ORDER FOR HEARING

An application pursuant to section 6 (b) of the Public Utility Holding Company Act of 1935, having been duly filed with this Commission by the above-named party:

It is ordered, That a hearing on such matter be held on June 16th, 1939, at 10:00 o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue, NW., Washington, D. C. On such day the hearing-room clerk in room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

It is further ordered, That James G. Ewell or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so des-

ignated to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of said Act and to a trial examiner under the Commission's Rules of Practice to continue or postpone said hearing from time to time.

Notice of such hearing is hereby given to such declarant or applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before June 10th, 1939.

The matter concerned herewith is in regard to an application by New York State Electric & Gas Corporation, a subsidiary of NY PA NJ Utilities Company, a registered holding company, pursuant to section 6 (b) for exemption from the provisions of section 6 (a) of the issue and sale of its note in the principal amount of \$300,000 bearing interest at the rate of 2.73% to Rural Electrification Administration. The note, to be secured by the pledge of applicant's First Mortgage Bonds, 4% Series due 1965 in an aggregate principal amount of not in excess of \$400,000, is to be dated as of the date of issue thereof, and is to mature in thirty-nine equal installments. The first installment is to be payable one year after the date of the note and the remaining installments on each semi-annual interest payment date to maturity. It is stated that the New York State Public Service Commission by order dated May 10, 1939 authorized the issuance and sale by the applicant of said Note and the issuance of said First Mortgage Bonds, 4% Series due 1965, to be pledged as collateral security therefor.

By the Commission.

[SEAL]

FRANCIS P. BRASSOR,
Secretary.

[F. R. Doc. 39-1890; Filed, June 1, 1939; 11:11 a. m.]

